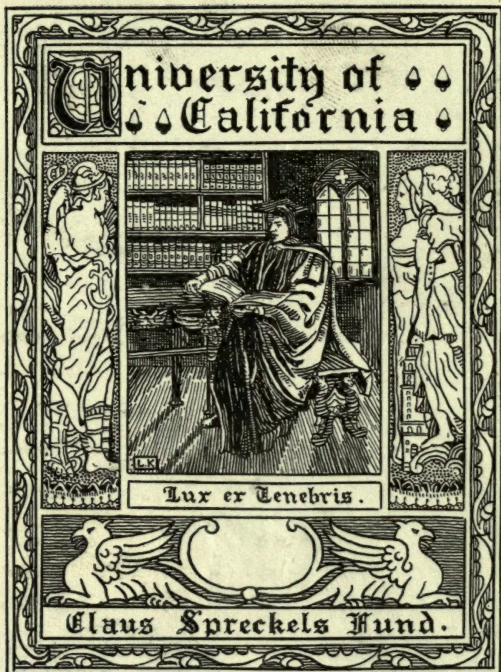


J. HECK



INTERSTATE TRANSPORTATION

A TREATISE
ON THE
FEDERAL REGULATION
OF
INTERSTATE TRANSPORTATION AND
COMMON CARRIERS

INCLUDING
Jurisdiction of the Interstate Commerce Commission

REVISED TO DATE
Containing the Act of June 18, 1910

BY
HARRY C. BARNES

Of the Cincinnati Bar



INDIANAPOLIS
THE BOBBS-MERRILL COMPANY
1910

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BY

HARRY C. BARNES

NOTE TO THE SECOND PRINTING.

The entire first printing of "Interstate Transportation" having been exhausted immediately upon publication, the author and the publishers took advantage of this fact and decided to make such changes in the second printing of the book as would bring it down to date, including the Mann-Elkins Bill of June 18, 1910, which created a Commerce Court and further amended the Act to Regulate Commerce.

The opportunity for a new printing, which has been created by the continued demand for the work, has been fully utilized and the law and decisions have been brought down to the minute.

The favorable reception given to the original work and its immediate sale has encouraged the author to undertake this revision, which has proven no small task.

The scope of the law has been largely increased and the jurisdiction of the Interstate Commerce Commission has been considerably amplified and more fully defined, thus effecting a number of important changes.

Certain jurisdiction, which the Commission heretofore exercised by implication or by virtue of judicial interpretation and construction, has been expressly conferred by the recent amendment.

All of these changes are fully treated of and discussed under their respective chapters. Some of the sections have been rewritten and new sections have been added, including all material decisions rendered since the last printing.

All matter which has been clearly superseded by the late amendment has been eliminated, thus presenting the subject as consistently with the present law as is possible in the absence of any judicial interpretation of the late act.

The author again acknowledges valuable assistance at the hands of his brother, Frederick George Barnes.

H. C. B.

Cincinnati, O., November 25, 1910.

PREFACE.

The purpose of this book is to present in a systematic, orderly and practical way the laws, rules and regulations governing the transportation of passengers and property under the Interstate Commerce Act as it now stands.

In the attainment of this object the author has carefully examined all the decisions and rules bearing on the subject. The extent of this labor, which has employed nearly two years of the author's time, will be better understood when it is borne in mind that most of the literature on the subject is in fragmentary form and the authorities are distributed through the numerous reports and decisions of the Interstate Commerce Commission, the many rulings promulgated, from time to time, by that body and the decisions of the United States courts.

Chapters on the Sherman Anti-trust Law and on the Employers' Liability Act have been included because of their kindred relation to the general subject and the value of the principles involved.

The author desires at this time to express his appreciation of the valuable help rendered him by his brother, Frederick George Barnes, in the preparation of this work.

The author invites any criticism or comments on the book that will aid him in improving the work with a view to making a subsequent edition more useful.

H. C. B.

Cincinnati, May 2, 1910.

TABLE OF CONTENTS.

CHAPTER.	PAGE.
I. Historical Antecedents	1
II. Genesis, Organization and Internal Arrangement of the Interstate Commerce Commission.....	18
III. Nature and Legal Status of Interstate Commerce Commission	54
IV. Transportation and Common Carriers subject to the Jurisdiction of the Interstate Commerce Commission.	59
V. Transportation and Common Carriers not subject to the Jurisdiction of the Interstate Commerce Commission.	119
VI. Classification of Freight and Freight Classifications...	140
▲ VII. Freight Rates and Charges.....	175
VIII. Long-and-Short-Haul Clause and Relief from Operation thereof	267
IX. Bills of Lading and Contracts of Shipment.....	272
X. Weights and Weighing	283
XI. Equipment—Car Supply and Distribution—Car Shortage	308
➤ XII. Routes and Routing	353
XIII. Refrigeration and Ventilation and Charges Therefor..	373
XIV. Transit Privileges	380
XV. Elevation	402
XVI. Contracts between Carriers and Shippers and the Public in General	407
XVII. Terminal Facilities, Regulations and Charges.....	420
XVIII. Demurrage or "Car-Service".....	440
XIX. Payment for Transportation	469
XX. Limitation of Carrier's Liability.....	477
XXI. Free and Reduced-Rate Transportation of Property.....	481
XXII. Allowances by Carriers for Services Rendered or Instrumentalities Furnished by Owners of Property Transported	492
XXIII. Allowances to Terminal Railroads and Boat Lines Owned or Controlled by the Shipper.....	497
XXIV. Switches and Switch Connections	505
XXV. Embargoes	511
XXVI. Discriminations, Preferences and Advantages.....	513

CHAPTER.	PAGE.
XXVII. Rebates and Concessions	566
XXVIII. Damages and Reparation	578
XXIX. Transportation of Explosives	642
XXX. Freight Tariffs or Rate Schedules.....	674
XXXI. Express Company Freight Tariffs or Rate Schedules..	781
XXXII. Passenger Fares, Tickets and Services.....	820
XXXIII. Free and Reduced-Rate Transportation of Passengers..	854
XXXIV. Passenger Tariffs or Fare Schedules.....	881
XXXV. Interchange of Traffic between Connecting Carriers and Through or Continuous Transportation.....	934
XXXVI. Contracts, Agreements and Arrangements between Com- mon Carriers	940
XXXVII. Car Per Diem Charge.....	945
XXXVIII. Pooling Contracts and Agreements.....	948
XXXIX. Accounts, Records and Memoranda of Common Car- riers	958
XL. Reports of Carriers to the Interstate Commerce Com- mission	962
XLI. Commodities Clause	974
XLII. Hours-of-Service Law	978
XLIII. Employers' Liability Act	987
XLIV. Sherman Anti-Trust Law	992
XLV. Government-Aided Railroad and Telegraph Companies.	995
XLVI. Penalties and Forfeitures for Violations of the Law....	1000
XLVII. Procedure and Practice before the Interstate Commerce Commission	1015
XLVIII. Appendices	1053
Index	1205

TABLE OF CASES.

LIST OF ABBREVIATIONS.

C. C. A.	United States Circuit Court of Appeals Reports.
Fed. Rep.	Federal Reporter, U. S. Circuit and District Courts.
I. C. R.	Interstate Commerce Reports.
I. C. C. R.	Interstate Commerce Commission Reports.
Sup. Ct. Rep.	United States Supreme Court Reporter.
U. S.	United States Supreme Court, from 1791. So cited from 1875. See Dal., Cranch, Wheat., Pet., How., Black, Wallace and Otto.
L. ed.	United States Supreme Court Reports, Lawyers' Edition.
L. R. A.	Lawyers' Reports, Annotated.
Con. Rul. Bul.	Conference Ruling Bulletin of Interstate Commerce Commission.
Tar. Cir.	Tariff Circular of Interstate Commerce Commission.

[References are to pages.]

A		Alleged Unlawful Rates, K. Cy. M. & B. Rd., 8 I. C. C. R. 121,	
Abilene case (Texas & P. Ry. v. Abilene Cotton Oil Co.), 204 U. S. 426, 58, 258, 339, 409 438, 581, 585, 587, 589 590, 600, 602, 616		69, 384	
Acme Cement Co. v. Chicago & Alton Rd., 17 I. C. C. R. 220, 121		Allen v. Chicago, M. & St. P. Ry., 16 I. C. C. R. 293, 597, 610	
v. Chicago Great Western Ry., 18 I. C. C. R. 19, 550		Allen & Lewis v. Oregon R. & N. Co., 98 Fed. Rep. 16, 106 Fed. Rep. 265, 218	
v. Lake Shore & M. S. Ry., 17 I. C. C. R. 30, 178, 179, 217, 226, 228		Allowances, Elevators Union Pacific Rd., 12 I. C. C. R. 86, 385, 402, 403, 423, 493	
Advances in Freight Rates, 9 I. C. C. R. 382, 194		Allowances on Transfer of Sugar, 14 I. C. C. R. 619, 493	
Alaska Water Carriers, 19 I. C. C. R. 81, 139		Alpha Portland Cement Co. v. D. L. & W. Rd., 19 I. C. C. R. 297, 626	
Alexander v. Chicago, Burling- ton & Q. Ry., 16 I. C. C. R. 103, 634		American Bankers Association v. American Express Co., 15 I. C. C. R. 15, 118	
		American Creosoting Works v. Ill. Cent. Rd., 15 I. C. C. R., 160, 321, 460	

[References are to pages.]

American Express Co. v. U. S., 212 U. S. 522,	490	Associated Jobbers Los Angeles v. A. T. & S. F. Ry., 18 I. C. C. R. 310,	510
American Fruit Union v. Cincinnati, N. O. & T. P. Ry., 12 I. C. C. R. 411,	631	Associated Wh. Grocers St. Louis v. Mo. Pac. Ry., 1 I. C. C. R. 156,	558, 875
American Grass Twine Co. v. C. St. P. M. & O. Ry., 12 I. C. C. R. 141,	610	Atchison T. & S. F. Ry. v. Denver & N. O. Rd., 110 U. S. 667,	236
American Lumber & Mfg. Co. v. Southern Pac. Ry., 14 I. C. C. R. 561,	286, 303, 304, 305	v. Holmes, 18 Okla. 92,	411
American Warehousemen's Association v. Ill. Cent. Rd., 7 I. C. C. R. 556,	395, 424, 451, 591, 698, 704	v. United States, 177 Fed. Rep. 114,	981
American & O. Ins. Co. v. Bales of Cotton, 1 Pet. 511,	74	Atlanta K. & N. Ry. v. Horne, 106 Tenn. 73,	419
Ames-Brooks Co. v. Rutland Rd., 16 I. C. C. R., 479,	621	Atlanta & West Point Rd. Tariffs, 3 I. C. C. R. 24,	180
Anderson, Clayton & Co. v. St. L. & S. F. Rd., 17 I. C. C. R. 12,	392	Augusta & Southern Rd. v. W. & T. Rd., 74 Fed. Rep. 523,	95
Anderson Tully Co. v. C. R. I. & P. Ry., 18 I. C. C. R. 48,	200	Avery Mfg. Co. v. A. T. & S. F. Ry., 16 I. C. C. R. 20,	220
Andrews Soap Co. v. P. C. C. & St. L. Ry., 4 I. C. C. R. 41,	161	B	
Angle v. C. & St. P. Ry., 151 U. S. 1,	559	Baer Bros v. Missouri Pac. Ry., 13 I. C. C. R. 329, 74, 87, 617,	971
Ann Arbor Rd. v. R. R. Comm. Ohio, 8 Nisi Prius Rep. 233,	448	Baird v. St. L. I. M. & S. Ry., 41 Fed. Rep. 592,	273, 297
Annapolis & Baltimore Rd., Re, 1 I. C. R. 315,	93	Baltimore & Ohio Rd. v. Grant, 98 U. S. 398,	123
Anthony v. Phila. & Reading Ry., 14 I. C. C. R. 581,	184	v. Hamburger, 155 Fed. Rep. 849,	603, 848
Anthony Salt Co. v. Mo. Pac. Ry., 5 I. C. C. R. 299,	215	v. U. S. ex rel. Pitcairn Coal Co., 215 U. S. 164,	339
Apollon, The, 9 Wheat. 362,	441	v. United States, 215 U. S. 481,	438
Arkansas Fuel Co. v. C. M. & St. P. Ry., 16 I. C. C. R. 95,	597	Banner Milling Co. v. N. Y. C. & H. R. R., 14 I. C. C. R. 398,	181
Armour Packing Co. v. U. S., 209 U. S. 56, 153 Fed. Rep. 135,	132, 409, 414, 568, 569, 577, 776	Barden & Swarthout v. Lehigh V. Rd., 12 I. C. C. R. 194,	507, 635
Artz v. Seaboard Air Line, 11 I. C. C. R. 158,	822, 823	Bartles Oil Co. v. C. M. & St. P. Ry., 17 I. C. C. R. 146,	230
		Barton v. Barbour, 104 U. S. 126,	115

[References are to pages.]

Bates v. Pennsylvania Rd., 3 I. C. C. R. 435,	545	Board of Trade v. N. C. & St. L. Rd., 8 I. C. C. R. 503, 180, 189	
Beatrice Creamery Co. v. Ill. Cent. Rd., 15 I. C. C. R. 109,	411	Board of Trade v. Norfolk & W. Ry., 16 I. C. C. R. 12,	228
Beatrice Moran, The, v. New Orleans, 112 U. S. 69,	66	Board of Trade Kansas Cy. v. C. B. & Q. Ry., 12 I. C. C. R. 173,	387
Beekman Lumber Co. v. K. C. Ry., 17 I. C. C. R. 86,	383	Board of Trade Lynchburg v. Old Dominion S. S. Co., 6 I. C. C. R. 215,	615
v. St. Louis S. W. Ry., 14 I. C. C. R. 532,	456	Board of Trade Troy v. Ala. Mid. Ry., 6 I. C. R. 1,	114
Beggs v. Wabash Rd., 16 I. C. C. R. 208,	286, 306	Board of Trade Union v. C. M. & St. P. Ry., 1 I. C. C. R. 215,	522
Bell Co. v. Baltimore & Ohio S. W. Rd., 9 I. C. C. R. 632,	535	Boering v. Chesapeake Beach Rd., 193 U. S. 442,	880
Bennett v. M. & St. P. Ry., 15 I. C. C. R. 301,	292	Boise Commercial Club v. Adams Express Co., 17 I. C. C. R. 115,	208
Big Blackfoot Milling Co. v. Nor. Pac. Ry., 16 I. C. C. R. 173,	690	Boston Chamber of Commerce v. Lake Shore Ry., 1 I. C. C. R. 436,	177
Bigbee & Warriar Packet Co. v. Mobile & Ohio Rd., 60 Fed. Rep. 545,	532	Boston Fruit Exchange v. N. Y. & N. E. Rd., 4 I. C. C. R. 664,	213
Bills of Lading, Re, 14 I. C. C. R. 346,	274, 275, 280	v. same, 5 I. C. C. R. 1,	208
Bitterman v. Louisville & N. Rd., 207 U. S. 205, 144 Fed. Rep. 34,	559, 847	Bovaird Supply Co. v. A. T. & S. F. Ry., 13 I. C. C. R. 56,	474
Black Horse Tobacco Co. v. Ill. Cent. Rd., 17 I. C. C. R. 588,	263, 623	Bowman v. Chicago & N. W. Ry., 125 U. S. 465,	66, 436, 437, 445, 446
Black Mountain Coal Co. v. Southern Ry., 15 I. C. C. R. 286,	552	Brabham v. Atlantic Coast Line, 11 I. C. C. R. 464, 188,	823
Blackman v. Southern Ry., 10 I. C. C. R. 352,	429, 704	Brady v. Pennsylvania Rd., 2 I. C. C. R. 131,	237
Blackwell M. & E. Co. v. M. K. & T. Ry., 12 I. C. C. R. 24,	532	Bregman & Co. v. Pennsylvania Rd., 15 I. C. C. R. 478,	370
Blinn Lumber Co. v. So. Pac. Ry., 18 I. C. C. R. 430,	408, 473	Brennan v. Titusville, 153 U. S. 289,	66
Blume & Co. v. Wells-Fargo & Co., 15 I. C. C. R. 53,	595	Brewer v. Central of Ga. Rd., 84 Fed. Rep. 258,	53
Board Mayor and Aldermen Bristol v. V. & S. W. Ry., 15 I. C. C. R. 453,	213	Brewer & Hanleiter v. L. & N. Rd., 7 I. C. C. R. 224,	188

[References are to pages.]

Central Stock Yards v. L. & N. Rd., 192 U. S. 568, 118 Fed. Rep. 113,	315, 439	Chicago, Burlington & Q. Ry. v. United States, 209 U. S. 90, 157 Fed. Rep. 830,	577
Central Trust Co. v. St. L. A. & F. Ry., 40 Fed. Rep. 426,	116	Chicago Livestock Exch. v. C. G. W. Ry., 10 I. C. C. R. 428,	184, 198
Central Yellow Pine Assn. v. Ill. Cent. Rd., 10 I. C. C. R. 505,	185, 188, 190, 191, 193, 212, 214, 498, 573, 992	Chicago Lumber Co. v. Tioga Ry. Co., 16 I. C. C. R. 323,	197, 213, 220, 519
v. V. S. & P. Ry., 10 I. C. C. R. 193, 381, 498, 573, 702, 773		Chicago & M. Electric Rd. v. Ill. Cent. Rd., 13 I. C. C. R. 20,	85
Chamber of Commerce v. C. M. & St. P. Ry., 7 I. C. C. R. 481,	199	Chicago & N. W. Ry. v. Osborne, 52 Fed. Rep. 912,	228
Chamber of Commerce v. Flint & P. M. Rd., 2 I. C. C. R. 553,	533	Chicago, R. I. & P. Ry. v. Hubbell, 54 Kas. 232,	411
Chamber Comm. Milwaukee v. C. R. I. & P. Ry., 15 I. C. C. R. 460,	551	Chicago, St. P. & K. C. Ry. Rates, 2 I. C. C. R. 231,	197
Chamber Comm. Minneapolis v. Great Nor. Ry., 4 I. C. R. 230,	549	Chickasaw Compress Co. v. G. C. & S. F. Ry., 13 I. C. C. R. 187,	197
Chandler v. F. S. W. Rd., 13 I. C. C. R. 473,	123	Chiles v. Chesapeake & Ohio Ry., 125 Ky. 299 (U. S. Sup. Ct.),	561
Chappell v. Louisville & Nashville Rd., 19 I. C. C. R. 56,	314, 315, 544	China & Japan Trading Co. v. Georgia Rd., 12 I. C. C. R. 236,	212, 213
Charge Grand Jury, 66 Fed. Rep. 146,	858	Cincinnati Chamber of Commerce v. B. & O. S. W. Rd., 10 I. C. C. R. 378,	422
Charge Grand Jury, 151 Fed. Rep. 834,	66	Cincinnati, H. & D. Ry. v. I. C. C., 206 U. S. 142, 146 Fed. Rep. 559,	144
Charges on Fruit, 10 I. C. C. R. 360,	309, 312, 315, 374	Cincinnati, N. O. & T. P. Ry. v. I. C. C., 162 U. S. 184,	91, 92, 126, 129, 249, 519
Charges on Fruit, 11 I. C. C. R. 129,	309, 319, 375, 700	Cist v. Michigan Central Rd., 10 I. C. C. R. 217,	139, 826
Charlotte Shippers v. Southern Ry., 11 I. C. C. R. 108,	181, 230	City Gas Co. v. B. & O. Rd., 11 I. C. C. R. 371,	631
Chesapeake & Ohio Ry. v. Kentucky, 179 U. S. 388,	561	City of Spokane v. Nor. Pac. Ry., 15 I. C. C. R. 376,	192
v. Standard Lumber Co., 174 Fed. Rep. 107,	414	City Council Atchison v. Mo. Pac. Ry., 12 I. C. C. R. 111,	547
Chicago & Alton Rd. v. United States, 156 Fed. Rep. 558,	493		

[References are to pages.]

Class Rates St. Louis & Texas, 11 I. C. C. R. 239, 185, 194	Consol. Forwarding Co. v. So. Pac. Ry., 9 I. C. C. R. 182, 312
Clements v. Louisville & Nash- ville Rd., 153 Fed. Rep. 979, 58, 635, 676	v. same, 10 I. C. C. R. 590, 213, 968
Clergymen, Passes to, 15 I. C. C. R. 45, 870	Cooley v. Port Wardens (Port Wardens Case), 12 How. 299, 66, 436, 445
Cleveland C. C. & St. L. Ry. v. Hirsh Steel Co. (6 Cir. U. S.), 415	Coomes & McGraw v. C. & St. P. Ry., 13 I. C. C. R. 192, 455, 597
Coe v. Errol, 116 U. S. 517, 69, 87, 105	Copper Queen C. M. Co. v. B. & O. Rd., 18 I. C. C. R. 154, 229, 614
Coffeyville Brick Co. v. St. L. & S. F. Rd., 12 I. C. C. R. 498, 208, 210	Corn Belt Meat P. A. v. C. B. & Q. Ry., 14 I. C. C. R. 376, 230, 262
Cohens v. Virginia, 6 Wheat. 264, 76	Corn Export Rates E. and W. Miss. River, 8 I. C. C. R. 185, 551, 774
Colorado Fuel & Iron Co. v. So. Pac. Ry., 6 I. C. R. 488, 184, 196, 214, 222, 228 367, 544, 698, 707	Corn and Corn Products Rates, 11 I. C. C. R. 227, 198
Columbia Conduit Co. v. Pennsylvania, 90 Pa. 307, 102	Corporation Comm. Okla. v. C. R. I. & P. Ry., 17 I. C. C. R. 379, 935
Columbus Ins. Co. v. Peoria Bridge Co., 6 McLean 70, 2	Cosmopolitan Shipping Co. v. Hamburg-American Pac. Co., 13 I. C. C. R. 207, 109, 123
Columbus I. & S. Co. v. K. & M. Ry., 178 Fed. Rep. 261, 258	v. same, 13 I. C. C. R. 266, 109, 123, 776, 950
Commercial Club v. C. R. I. & P. Ry., 6 I. C. R. 647, 549	Cotton Rates Re, 8 I. C. C. R. 121, 69, 384
Commercial Club Omaha v. An- derson & S. R. Ry., 18 I. C. C. R. 532, 610	Cound v. Atchison, T. & S. F. Ry., 173 Fed. Rep. 527, 991
v. C. & N. W. Ry., 7 I. C. C. R. 386, 58, 418	Council v. Western & Atlantic Rd., 12 I. C. C. R. 339, 58, 562, 605
v. Southern Pac. Ry., 18 I. C. C. R. 53, 612	Counsil v. St. Louis & S. F. Rd., 16 I. C. C. R. 188, 370
Commercial Coal Co. v. B. & O. Rd., 15 I. C. C. R. 11, 217, 218	Covington Stock Yards v. Keith, 139 U. S. 128, 431
Commutation Tickets School Children, 17 I. C. C. R. 144, 831	Covington & Cin. Bridge Co. v. Kentucky, 154 U. S. 204, 4 I. C. R. 649, 71, 136
Complaint Illinois Central Rd., 12 I. C. C. R. 8, 876	
Connor v. Mobile & Ohio Rd., 11 I. C. C. R. 537, 528	

[References are to pages.]

Downes v. Bidwell, 182 U. S. 244,	139	Elevator - Allowances Union Pac. Rd., 12 I. C. C. R. 86, 385, 402, 403, 423, 493	
Duke v. St. Louis & S. F. Rd., 172 Fed. Rep. 684,	991	Elvey v. Illinois Central Rd., 3 I. C. C. R. 652,	528
Duluth Log Co. v. C. M. St. P. & O. Ry., 16 I. C. C. R. 38, 297, 298		Empire State Cattle Co. v. A. T. & S. F. Ry., 210 U. S. 1, 147 Fed. Rep. 457,	368
v. M. & I. Ry., 15 I. C. C. R. 192,	494	Employers Liability Cases, 207 U. S. 463,	76
Duluth & Iron Range Ry. v. C. St. P. M. & O. Ry., 18 I. C. C. R. 485,	363, 628	Enterprise Mfg. Co. v. Georgia Rd., 12 I. C. C. R. 451,	213, 548
Duncan v. Atchison, T. & S. F. Ry., 6 I. C. C. R. 85, 58, 143, 155, 184, 204, 217 410, 472, 596, 604, 822, 823		Enterprise Trans. Co. v. Penn. Rd., 12 I. C. C. R. 327, 100, 101, 102, 137, 354	
Duncan & Co. v. N. C. & St. L. Ry., 16 I. C. C. R. 590,	206	Escanaba Co. v. Chicago, 107 U. S. 678,	66
Durousseau, The, v. United States, 6 Cranch 307,	336	Eschner v. Pennsylvania Rd., 18 I. C. C. R. 60,	830, 851
Dwight v. Brewster, 1 Pick. 50,	62	Evans v. Northern Pacific Ry., 6 I. C. C. R. 520,	226
E		Ex parte Koehler, 30 Fed. Rep. 867,	69, 86, 120, 131
East Tennessee, V. & G. Ry. v. I. C. C., 99 Fed. Rep. 52,	950	Ex parte McCardle, 7 Wall. 514,	122
Eaton v. Cincinnati, H. & D. Rd., 11 I. C. C. R. 619, 590, 605, 631, 634, 635		Ex parte Morgan, 20 Fed. Rep. 305,	72
Eau Claire Board of Trade v. C. M. & St. P. Ry., 5 I. C. C. R. 264,	186, 187, 522	Ex parte Tyler, 149 U. S. 164,	115
Eddleman v. Midland Valley Rd., 13 I. C. C. R. 103,	434	Exchange Free Transportation, 12 I. C. C. R. 40, 134, 135, 861, 877	
Eddy v. Lafayette, 163 U. S. 456,	116	Export Rates Corn E. and W. Miss. River, 8 I. C. C. R. 185, 551, 774	
Edmunds v. Illinois Central Rd., 80 Fed. Rep. 78,	638	Export Shipping Co. v. Wa- bash Rd., 14 I. C. C. R. 437, 536, 537	
Edwards v. N. C. & St. L. Ry., 12 I. C. C. R. 247,	560	Export and Domestic Rates, 8 I. C. C. R. 214,	776
Eichenberg v. Southern Pac. Ry., 14 I. C. C. R. 250,	591	Export and Import Tariff Pub- lication, 10 I. C. C. R. 55,	776
El Paso & Northern Ry. v. Gutierrez, 215 U. S. 87,	988	Express Cases, 117 U. S. 1, 315, 317	
		Express Co. Contracts for Men, 16 I. C. C. R. 246,	488, 878

[References are to pages.]

Express Companies, Re, 1 I. C.		Forest City Freight Bureau v.	
C. R. 349,	95	Ann Arbor Rd., 18 I. C. C. R.	
		205,	155
F		Form and Contents Rate	
		Schedules, 6 I. C. C. R. 267,	
		177, 711	
Falls & Co. v. C. R. I. & P.		Fort Smith Traffic Bureau v.	
Ry., 15 I. C. C. R. 269,	294, 474	St. L. & S. F. Rd., 13 I. C. C.	
Fargo v. Michigan, 121 U. S.		R. 651,	148, 217
230,	66	Foster Lumber Co. v. A. T. &	
Farmers L. & T. Co. v. Nor.		S. F. Ry., 15 I. C. C. R. 56,	
Pac. Ry., 83 Fed. Rep. 249,	117	181, 619	
Farmers Warehouse Co. v. L.		v. G. C. & S. F. Ry., 17 I. C.	
& N. Rd., 12 I. C. C. R. 457,	612	C. R. 385,	619
Farrar v. Southern Ry., 11 I.		Free Transportation Newspa-	
C. C. R. 632,	184, 185	per Employes, 12 I. C. C. R.	
Fathauer Co. v. St. L. I. M. &		16,	861
S. Ry., 18 I. C. C. R. 517,	499, 500	Free Transportation, Exchange	
Federal Sugar Refining Co. v.		of, 12 I. C. C. R. 40,	
B. & O. Rd., 17 I. C. C. R. 40,		134, 135, 861, 877	
493, 574		Free Transportation, B. & M.	
Field v. Southern Ry., 13 I. C.		Rd., 3 I. C. C. R. 717,	874
C. R. 298,	829, 835, 851	Freeborn v. Smith, 2 Wall. 173,	
Fielder v. Missouri, K. & T.		122, 123	
Ry., 42 S. W. (Tex.), 362,	439	Freight Bureau Cincinnati v.	
First Nat. Bank Brunswick v.		C. N. O. & T. P. Ry., 7 I. C.	
Yankton, 101 U. S. 129,	74	C. R. 180,	186, 211
Fish Commission, Re, 1 I. C.		v. same, 6 I. C. C. R. 195,	
C. R. 21,	482	186, 227, 638	
Fisk & Son v. B. & M. Rd., 19		Freight Rates Food Products, 4	
I. C. C. R. 299,	455	I. C. C. R. 79,	156, 157
Fitzgerald v. Fitzgerald Co.,		Freight Rates Memphis and	
41 Neb. 374,	418	Arkansas, 11 I. C. R. R. 180,	230
Flaccus Glass Co. v. C. C. C. &		Freight Rates Proposed Ad-	
St. L. Ry., 14 I. C. C. R. 333,		vances, 9 I. C. C. R. 382,	194
210, 364, 624		Fruit Charges, 10 I. C. C. R.	
Flint & Walling v. L. S. & M.		360,	309, 312, 315, 374
S. Ry., 14 I. C. C. R. 336,	597, 610	Fruit Charges, 11 I. C. C. R.	
Folmer & Co. v. Great North-		129,	309, 319, 375, 700
ern Ry., 15 I. C. C. R. 33,	618		
Food Products Freight Rates,		G	
4 I. C. C. R. 48,	214	Gallogly & Firestone v. C. H.	
Food Products Freight Rates,		& D. Ry., 11 I. C. C. R. 1,	
4 I. C. C. R. 79,	156, 157	120, 331, 605, 635	

[References are to pages.] •

Harvard Co. v. Pennsylvania Co., 4 I. C. C. R. 212,	Hillsdale C. & C. Co. v. Penn. Rd., 19 I. C. C. R. 356,
149, 153, 156, 204, 525	325, 326, 330
Harvey v. Louisville & Nashville Rd., 5 I. C. C. R. 153,	Hilton Lumber Co. v. Wilmington & W. Rd., 9 I. C. C. R. 17,
874	208, 210, 221, 532
Hawaii v. Mankichi, 190 U. S. 197,	Hitchman C. & C. Co. v. B. & O. Rd., 16 I. C. C. R. 512,
139	523
Harwell v. C. & W. Rd., 1 I. C. C. R. 236, 1 I. C. R. 631,	Holbrook v. St. P. M. & M. P. Co., 1 I. C. C. R. 102,
180, 281	641
Hawkins v. Wheeling & L. E. Rd., 9 I. C. C. R. 212,	Holcombe Hayes Co. v. Ill. Cent. Rd., 12 I. C. C. R. 128,
320	619
Hays v. Pacific Mail Co., 58 U. S. 596,	Hood & Sons v. Delaware, L. & W. Rd., 17 I. C. C. R. 15, 70, 87
66	v. Delaware & Hudson Co., 17 I. C. C. R. 19,
Heard v. Georgia Rd., 1 I. C. C. R. 428,	247
562	Hope Cotton Oil Co. v. Texas & P. Ry., 10 I. C. C. R. 696,
Heck v. East Tennessee, V. & G. Ry., 1 I. C. C. R. 495,	613
84	v. same, 12 I. C. C. R. 266,
Heeiman v. Beefman Co., 1 Fed. Rep. 145,	231, 635
3	Houston, etc. Co. v. Ins. Co. of N. A., 89 Tex. 1,
Henderson v. Mayor, 92 U. S. 259,	70
65, 66	Houston & T. C. Ry. v. Mayes, 201 U. S. 321,
Henderson Lumber Co. v. K. C. Ry., 16 I. C. C. R. 129,	343, 350
624	Howard v. Illinois Central Rd., 207 U. S. 463,
Henderson & Barkdull v. St. L. I. M. & S. Rd. 18 I. C. C. R. 514,	988
392	Howard Mills Co. v. Pacific Ry., 12 I. C. C. R. 259,
Hennepin Paper Co. v. Nor. Pac. Ry., 12 I. C. C. R. 535,	199
364, 624, 625, 627	Howell v. N. Y. L. E. & W. Rd., 2 I. C. C. R. 272,
Hennick, In re, 5 Macky 489,	183, 221
67	Humboldt S. S. Co. v. W. P. & Y. Route, 19 I. C. C. R. 105,
Herbeck Demer Co. v. B. & O. Rd., 17 I. C. C. R. 88,	139
827	Hurlburt v. Lake Shore & M. S. Ry., 2 I. C. C. R. 122,
Hewins v. New York, N. H. & H. Rd., 10 I. C. C. R. 221,	120, 165, 708
821	Hussey v. Chicago, R. I. & P. Ry., 13 I. C. C. R. 366,
Hezel Milling Co. v. St. L. & T. H. Rd., 5 I. C. C. R. 57,	122, 607
311	
Hill v. Nashville, C. & St. L. Ry., 6 I. C. C. R. 343,	I
186	
Hill Cotton Co. v. M. K. & T. Ry., 6 I. C. C. R. 601,	Illinois Central Rd. Complaint, 12 I. C. C. R. 8,
302, 540	876
Hill & Webb v. M. K & T. Ry., 16 I. C. C. R. 569,	Illinois Central Rd. v. I. C. C., 206 U. S. 441,
232	191, 201, 223

[References are to pages.]

Ilwaco Ry. & Nav. Co. v. Oregon Short Line, 51 Fed. Rep. 611, 57 Fed. Rep. 673,	938	Interstate Commerce Commission v. Chesapeake & Ohio Ry., 128 Fed. Rep. 59,	516, 568, 618
Immigrant Transportation, Re, 10 I. C. C. R. 13,	691	v. Chicago & Alton Rd., 215 U. S. 479,	326, 438
Imperial Coal Co. v. P. & L. E. Rd., 2 I. C. C. R. 618,		v. Chicago, B. & Q. Ry., 98 Fed. Rep. 173, 103 Fed. Rep. 249,	432
182, 187, 220, 221, 268,	533	v. same, 186 U. S. 320,	432, 699
Import Rate Case (Texas & P. Ry. v. I. C. C.), 162 U. S. 197,		v. Chicago Great Western Ry., 141 Fed. Rep. 1003,	209 U. S. 108,
44, 64, 82, 119, 130, 197, 228,	516	183, 185, 186, 189, 282,	520
520, 521, 529, 530, 531, 532,	552	v. Cincinnati, H. & D. Ry., 146 Fed. Rep. 559, 206 U. S. 142,	160
Independent Refin. Assn. v. W. N. Y. & P. Rd., 5 I. C. C. R. 415,	950	v. Cincinnati, N. O. & T. P. Ry., 167 U. S. 479,	19, 256, 260, 261, 520
v. same, 6 I. C. R. 318,	117	v. same, 64 Fed. Rep. 981,	56
v. same, 4 I. C. R. 162,	309	v. same, 76 Fed. Rep. 183,	55
Indian Supplies, Re, 1 I. C. C. R. 15,	483	v. Delaware, L. & W. Rd., 64 Fed. Rep. 723,	154
Indianapolis Freight Bureau v. C. C. C. & St. L. Ry., 15 I. C. C. R. 367,	178	v. Detroit, G. H. & M. Ry., 167 U. S. 633, 57 Fed. Rep. 1005,	438, 445
Industrial Lumber Co. v. St. L. W. & G. Ry., 19 I. C. C. R. 50,	499, 500	v. Illinois Central Rd., 215 U. S. 452, 173 Fed. Rep. 930,	326, 327, 333, 438
Insular Cases—See De Lima v. Bidwell, Downes v. Bidwell, Dorr v. United States, Hawaii v. Mankichi.		v. Lake Shore & M. S. Ry., 134 Fed. Rep. 942,	199
Interstate Commerce Commission, Application Brimson, 4 I. C. R. 315,	56	v. Louisville & Nashville Rd., 190 U. S. 273,	212
Interstate Commerce Commission v. Ala. Mid. Ry., 168 U. S. 144, 69 Fed. Rep. 227,		v. same, 73 Fed. Rep. 409,	55, 56, 226, 418
181, 261, 516, 517, 520, 552,	835	v. same, 118 Fed. Rep. 613,	56, 550, 614
v. Baltimore & Ohio Rd., 145 U. S. 263, 43 Fed. Rep. 37,	1, 519, 520, 522,	833	
v. Bellaire, Z. & C. Ry., 77 Fed. Rep. 942,	92, 972	v. Receiver C. G. W. Ry., 215 U. S. 66,	430, 696
v. Brimson, 154 U. S. 447,	19, 28	v. Reichman, 145 Fed. Rep. 235,	102, 568
		v. Seaboard Air Line, 82 Fed. Rep. 563,	92, 93

[References are to pages.]

Interstate Commerce Commission v. Southern Pacific Ry., 132 Fed. Rep. 829, 949 v. Southern Ry., 117 Fed. Rep. 741, 122 Fed. Rep. 800, 204 v. Stickney, 215 U. S. 66, 430, 696 v. Texas & Pacific Ry., 57 Fed. Rep. 948, 529 v. Western N. Y. & Penn. Rd., 82 Fed. Rep. 192, 118	Jones Bros. v. Montpelier & W. R. Rd., 14 I. C. C. R. 139, 287 Joynes v. Pennsylvania Rd., 17 I. C. C. R. 361, 587 Junod v. Chicago & N. W. Ry., 47 Fed. Rep. 290, 615 Jurisdiction Water Carriers, 15 I. C. C. R. 205, 67, 79, 107, 109, 110, 138 Jurisdiction Water Carriers Alaska, 19 I. C. C. R. 81, 139
Interstate Remedy Co. v. American Express Co., 16 I. C. C. R. 436, 735	K
Interstate Stock Yards v. Indianapolis Union Ry., 99 Fed. Rep. 472, 98	Kalispel Lumber Co. v. Great Nor. Ry., 16 I. C. C. R. 164, 690 Kansas City Hay Co. v. C. M. & St. P. Ry., 16 I. C. C. R. 100, 597 Kansas City, M. & B. Rd. Rates, 8 I. C. C. R. 121, 69, 384 Kansas City Trans. Bureau v. A. T. & S. F. Ry., 16 I. C. C. R. 195, 177, 187, 220 Kaye & Carter Lumber Co. v. C. M. & St. P. Ry., 14 I. C. C. R. 604, 494 v. M. & I. Ry., 16 I. C. C. R. 285, 286, 305 v. same, 17 I. C. C. R. 209, 306 Kehoe v. Charleston & W. C. Rd., 11 I. C. C. R. 166, 442, 449, 947 Kehoe & Co. v. N. C. & St. L. Ry., 14 I. C. C. R. 555, 430 Keith v. Kentucky Central Rd., 1 I. C. C. R. 189, 430 Kemble v. Boston & Albany Rd., 8 I. C. C. R. 110, 109, 123, 529, 776 Kentucky & I. Bridge Co. v. L. & N. Rd., 2 I. C. C. R. 162, 55, 101, 136, 137, 356, 936 v. same, 37 Fed. Rep. 567, 55, 101, 136, 137, 356, 936
J	
James & Abbott v. Canadian Pac. Ry., 5 I. C. C. R. 612, 623, 154, 163, 228, 548 James Morrison, The, 1 Newb. 241, 3 Jerome Hill Cotton Co. v. M. K. & T. Ry., 6 I. C. C. R. 601, 302, 540 Jobbins v. Chicago & N. W. Ry., 17 I. C. C. R. 297, 305 Johnson v. C. M. St. P. & O. Ry., 9 I. C. C. R. 221, 188 Johnston v. St. Louis & S. F. Rd., 12 I. C. C. R. 73, 217, 218, 611 Joint Rates Terminal Roads, 10 I. C. C. R. 385, 497, 498, 569, 571, 572, 573, 773 Jolly v. Terre Haute Co., 6 Mc- Lean 237, 2 Jones v. St. Louis & S. F. Rd., 12 I. C. C. R. 144, 57, 434	

[References are to pages.]

Little Rock & M. Rd. v. St. Louis S. W. Rd., 59 Fed. Rep. 400, 63 Fed. Rep. 775,	357	McNeill v. Southern Ry., 202 U. S. 543, 144 Fed. Rep. 82, 436, 437, 438, 439, 445, 446	
Logan Coal Co. v. Pennsylvania Rd., 154 Fed. Rep. 497,	311	McNulta v. Lochridge, 141 U. S. 327,	116
Lord v. Goodall N. & P. S. S. Co., 102 U. S. 541,	71	McNulty v. Batty, 10 How. 72,	122
Loud v. Southern Carolina Rd., 5 I. C. C. R. 529,		McRae Terminal Co. v. Southern Ry., 12 I. C. C. R. 270,	507
114, 182, 213, 596,	608	Macloon v. Boston & M. Rd., 9 I. C. C. R. 642,	821, 822
Louisville, N. O. & T. Ry. v. Mississippi, 133 U. S. 587, 87,	561	Macloon v. Chicago & N. W. Ry., 5 I. C. C. R. 84,	584, 590
Louisville & Nashville Rd., Re, 1 I. C. C. R. 84,	180	Maldonado & Co. v. Ferrocarril de Sonora, 18 I. C. C. R. 65,	305
v. Behlmer, 175 U. S. 648,		Manufacturers & Jobbers Union v. M. & St. L. Rd., 4 I. C. C. R. 79,	221
93, 94, 181,	249	Marley & Son v. Norfolk & W. Ry., 11 I. C. C. R. 616,	217, 218
v. Eubanks, 184 U. S. 27,	271	Marshall Oil Co. v. C. & N. W. Ry., 14 I. C. C. R. 210,	230, 257
v. Mottley, 211 U. S. 149,	417	Marshall & Michell Grain Co. v. St. L. & S. F. Rd., 16 I. C. C. R. 385,	364
Loup Creek Coal Co. v. Virginian Ry., 12 I. C. C. R. 471,		Martin v. Chicago, Burlington & Q. Ry., 2 I. C. C. R. 46,	180
211, 263, 358,	359	Martin v. Louisville & Nashville Rd., 9 I. C. C. R. 531,	198
Lull Carriage Co. v. C. K. & S. Ry., 19 I. C. C. R. 15,	209	Mason v. Chicago, R. I. & P. Ry., 12 I. C. C. R. 61,	459
Lundquist v. Grand Trunk W. Ry., 121 Fed. Rep. 915,	535	Mason v. Rhineland, 8 Ben. 163,	3
Lykes S. S. Co. v. Commercial Union, 13 I. C. C. R. 310,		Mattingly v. Pennsylvania Co., 3 I. C. C. R. 592,	64, 120
80, 108, 134		May v. McNeill, 6 I. C. C. R. 520,	117
M		Mayor Wichita v. A. T. & S. F. Ry., 9 I. C. C. R. 534,	188
McBride C. & Co. v. C. M. St. P. & O. Ry., 13 I. C. C. R. 572,	449	v. same, 9 I. C. C. R. 558,	228
McCardle, Ex parte, 7 Wall. 514,	122	Memphis Arkansas Freight Rates, 11 I. C. C. R. 180,	230, 1037
McClelen v. Southern Ry., 6 I. C. R. 588,	268		
McGrew v. Missouri Pac. Ry., 8 I. C. C. R. 630,	610		
McMillan v. Western Classif. Committee, 3 I. C. R. 282,	170		
McMorran v. Grand Trunk Ry., 3 I. C. C. R. 252,	186, 228, 532		

[References are to pages.]

Memphis Freight Bureau v. Ft. S. & W. Rd., 13 I. C. C. R. 1, 216, 354, 356	Missouri, K. & T. Ry. v. Stoner, 5 Texas Civ. App. 50, 410
Menefee Lumber Co. v. Texas & P. Ry., 15 I. C. C. R. 49, 218, 619	Missouri Pac. Ry. v. Larabee Flour Mills, 211 U. S. 612, 74 Kas. 808, 516
Merchants Cotton P. Co. v. N. A. Ins. Co., 151 U. S. 368, 273	Missouri & Kas. Shippers v. M. K. & T. Ry., 12 I. C. C. R. 438 56
Merchants Ins. Co. v. Ritchie, 5 Wall. 541, 123	Mobile Co. v. Kimball, 102 U. S. 691, 65
Merchants Union Spokane v. Nor. Pac. Ry., 5 I. C. C. R. 478, 118	Mobile & Ohio Rd. Rates, 9 I. C. C. R. 373, 190, 384, 702
Michie v. New York, N. H. & H. Rd., 151 Fed. Rep. 694, 422, 437, 446, 447, 450, 947	Modification of Section 6 of Act, 685
Michigan Box Co. v. F. & P. M. Rd., 6 I. C. C. R. 335, 200	Montague & Co. v. A. T. & S. F. Ry., 17 I. C. C. R. 72, 285
Michigan Buggy Co. v. G. R. & I. Ry., 15 I. C. C. R. 299, 209, 229	Montgomery Freight Bureau v. W. Ry. Ala., 14 I. C. C. R. 150, 208, 240
Michigan Congress Water Co. v. C. & G. T. Ry., 2 I. C. C. R. 594, 311	Moore v. United States, 85 Fed. Rep. 465, 56 U. S. App. 471, 123
Milburn Wagon Co. v. L. S. & M. S. Ry., 18 I. C. C. R. 144, 244	Morgan, Ex parte, 20 Fed. Rep. 305, 72
Milk Producers Union v. D. L. & W. Rd., 7 I. C. C. R. 92, 72, 869	Morgan v. Missouri, K. & T. Ry., 12 I. C. C. R. 525, 208, 235, 240, 241
Miller v. Georgia Rd., 88 Ga. 563, 450	Morrell v. Union Pacific Ry., 6 I. C. C. R. 121, 227
Miller v. Mansfield, 112 Mass. 260, 450	Morris v. Delaware, L. & W. Rd., 40 Fed. Rep. 101, 589
Milling-in-Transit Rates, 17 I. C. C. R. 113, 391	Morrisdale Coal Co. v. Pennsylvania Rd., 176 Fed. Rep. 748, 587, 606
Milwaukee Falls Chair Co. v. C. M. & St. P. Ry., 16 I. C. C. R. 217, 427	Mosher v. St. Louis, I. M. & S. Rd., 127 U. S. 390, 847
Miner v. New York, N. H. & H. Rd., 11 I. C. C. R. 422, 591	Mottley v. Louisville & Nashville Rd., 150 Fed. Rep. 406, 416
Minneapolis & St. Louis Rd. v. Minnesota, 186 U. S. 257, 210	Muskogee Commercial Club v. M. K. & T. Ry., 12 I. C. C. R. 312, 401
Missouri, K. & T. Ry. v. Bowles, 1 Ind. Ter. 251, 111, 410	Mutual Transit Co. v. United States, 178 Fed. Rep. 664, 126
v. I. C. C., 164 Fed. Rep. 645, 189	Myer v. C. C. C. & St. L. Ry., 9 I. C. C. R. 78, 149, 154
v. Love, 177 Fed. Rep. 493, 188	

[References are to pages.]

Myers v. Pennsylvania Rd., 2 I. C. C. R. 573, 154, 171	New York & N. Ry. v. N. Y. & N. E. Rd., 50 Fed. Rep. 867, 4 I. C. C. R. 702, 937
N	New York, N. H. & H. Rd. v. I. C. C., 200 U. S. 361, 516, 568 v. Platt, 7 I. C. C. R. 323, 210, 234
National Hay Association v. L. S. & M. S. Ry., 9 I. C. C. R. 264, 158, 161, 162, 181 200, 214, 296, 545	New York Produce Exchange v. B. & O. Rd., 7 I. C. C. R. 612, 186, 204, 553 v. N. Y. C. & H. R. Rd., 3 I. C. C. R. 137, 776
National Refining Co. v. A. T. & S. F. Ry., 18 I. C. C. R. 389, 617	Newark Machine Co. v. P. C. C. & St. L. Rd., 16 I. C. C. R. 291, 534
National Wh. Lumber Dealers v. Atlantic C. L., 14 I. C. C. R. 154, 494	Newland v. Northern Pacific Ry., 6 I. C. C. R. 131, 182, 188, 221, 364
Nebraska Freight Rate (Smyth v. Ames), 169 U. S. 466, 188, 190	Newport & Cin. Bridge Co. v. U. S., 105 U. S. 470, 136
Nebraska Iowa Grain Co. v. Union Pac. Rd., 15 I. C. C. R. 91, 688	Newspaper Employes, Re, 12 I. C. G. R. 16, 861
New Albany Box Co. v. Ill. Cent. Rd., 16 I. C. C. R. 315, 732	Newton Grain Co. v. C. B. & Q. Ry., 16 I. C. C. R. 341, 709
New Jersey Fruit Express v. C. R. R. N. J., 2 I. C. C. R. 142, 120	Niagara, The, v. Cordes, 62 U. S. 21, 62
New Orleans Cotton Exchange v. C. N. O. & T. P. Ry., 2 I. C. C. R. 375, 70, 187 v. L. N. O. & T. Ry., 4 I. C. C. R. 694, 776 v. Ill. Cent. Rd., 3 I. C. C. R. 534, 177, 187, 202, 226, 228	Nicola, Stone & Meyers v. L. & N. Rd., 14 I. C. C. R. 199, 597, 614, 617, 640
New Orleans Livestock Exch. v. T. & P. Ry., 10 I. C. C. R. 327, 184, 185	Nield v. C. M. St. P. & O. Ry., 12 I. C. C. R. 202, 507
New York Board of Trade v. Penn. Rd., 4 I. C. C. R. 447, 79, 179, 517, 529, 545, 778	Nollenberger v. Missouri Pac. Ry., 15 I. C. C. R. 595, 74, 87
New York Central & H. R. Rd. v. I. C. C., 168 Fed. Rep. 131, 56, 262, 1033	Norfolk & Western Ry. v. Adams, 90 Va. 393, 450 v. Pennsylvania, 136 U. S. 114, 66, 87
New York Hay Exchange v. Penn. Rd., 14 I. C. C. R. 178, 443	Norris v. Crocker, 13 How. 429, 122 Northern Pacific Ry. v. Adams, 192 U. S. 440, 880
	O
	Ocheltree Grain Co. v. Texas & P. Ry., 18 I. C. C. R. 412, 1034

[References are to pages.]

Omaha Cooperage Co. v. N. O. & St. L. Ry., 12 I. C. C. R. 250, 228, 532	Pankey v. Baltimore & Ohio Rd., 3 I. C. C. R. 658, 624, 627
Omaha & C. B. Ry. v. I. C. C., 179 Fed. Rep. 243, 85	Paola Refining Co. v. M. K. & T. Ry., 15 I. C. C. R. 29, 231
Orange Bank v. Brown, 3 Wend. 161, 62	Parsons v. Chicago & N. W. Ry., 167 U. S. 447, 11 I. C. C. R. 489, 227, 228, 532
Oregon Short Line v. Nor. Pac. Ry., 51 Fed. Rep. 465, 61 Fed. Rep. 158, 357, 938	Party-Rate Tickets, Re, 12 I. C. C. R. 95, 556, 835
Osborne v. Chicago & N. W. Ry., 48 Fed. Rep. 49, 614, 615	Passenger Tariffs, Re, 2 I. C. C. R. 649, 851
Ottinger v. Southern Pacific Ry., 1 I. C. C. R. 145, 641	Passenger Cases (Smith v. Turner), 7 How. 283, 2, 66
Ottumwa Bridge Co. v. C. M. & St. P. Ry., 14 I. C. C. R. 121, 619	Passenger Rates Portland, Ore., 16 I. C. C. R. 300, 360
Ozark Fruit Growers v. St. L. & S. F. Rd., 16 I. C. C. R. 106, 214, 307	Passenger Tariffs and Rate Wars, 2 I. C. C. R. 513, 845
v. same, 16 I. C. C. R. 134, 284	Passes to Clergymen, Re, 15 I. C. C. R. 45, 870
P	Paxton Tie Co. v. Duluth So. Ry., 10 I. C. C. R. 422, 591, 605, 632, 686
Pabst Brewing Co. v. C. M. & St. P. Ry., 17 I. C. C. R. 359, 611	Payne v. M. L. & T. R. & S. Co., 15 I. C. C. R. 186, 708
Pacific Coast Lumber Mfrs. v. Northern Pac. Ry., 14 I. C. C. R. 51, 361	Payne & Gardner Co. v. L. & N. Rd., 13 I. C. C. R. 638, 548
v. same, 16 I. C. C. R. 465, 259	Peale, Peacock & Kerr v. C. R. R. N. J., 18 I. C. C. R. 25, 701
Pacific Coast S. S. Co. v. R. R. Comm., 9 Sawy. 253, 18 Fed. Rep. 10, 71	Penn Tobacco Co. v. Old Do- minion S. S. Co., 18 I. C. C. R. 197, 619
Pacific Elevator Co. v. C. M. & St. P. Ry., 17 I. C. C. R. 373, 611	Pennsylvania v. F. C. & P. Rd., 5 I. C. C. R. 97, 610, 636
Pacific Purchasing Co. v. C. & N. W. Ry., 12 I. C. C. R. 549, 285, 286, 305, 614	v. Wheeling Bridge Co., 13 How. 518, 2, 3, 5
Page v. Delaware, L. & W. Rd., 6 I. C. C. R. 548, 149, 153, 154, 163	Pennsylvania Millers v. Phila. & R. Ry., 8 I. C. C. R. 531, 549, 94, 257, 269, 429, 447, 704
Paine Bros. v. Lehigh Valley Rd., 7 I. C. C. R. 218, 206, 525	Pennsylvania Rd. v. Internat. Coal M. Co., 173 Fed. Rep. 1, 517, 617
Palmer Dock Board v. Penn. Rd., 9 I. C. C. R. 61, 539	v. Midvale Steel Co., 201 Pa. 624, 450
	v. Roy, 102 U. S. 451, 374

[References are to pages.]

Pennsylvania Refining Co. v. W. N. Y. & P. Rd., 208 U. S. 208,	527, 584, 609, 633	Poor Grain Co. v. same, 12 I. C. C. R. 469,	363, 618, 687
Penrod Walnut Co. v. C. B. & Q. Ry., 15 I. C. C. R. 326,	612	Pope Mfg. Co. v. B. & O. Rd., 17 I. C. C. R. 400,	306
Pennsylvania State Millers v. Phila. & R. Ry., 8 I. C. C. R. 531, 549,	94, 257, 269, 429, 447, 704	Port Wardens Case (Cooley v. P. Wardens), 12 How. 299,	66, 436, 445
Phelps & Co. v. Texas & P. Ry., 4 I. C. C. R. 363,	93, 301, 302, 472, 540, 591, 699	Porter v. St. Louis & S. F. Rd., 15 I. C. C. R. 1,	257, 452, 707
Philadelphia & Reading Ry. v. I. C. C., 174 Fed. Rep. 687,	518	Portland, Ore., Through Passenger Rates, 16 I. C. C. R. 300,	360
Phillips v. N. Y. & B. Desp. Exp. Co., 15 I. C. C. R. 631,	553	Potter Mfg. Co. v. C. & G. T. Ry., 5 I. C. C. R. 514,	299
Phillips Bailey & Co. v. L. & N. Rd., 8 I. C. C. R. 93,	553	Poughkeepsie Iron Co. v. N. Y. C. & H. R. Rd., 4 I. C. C. R. 195,	533
Pickard v. Pullman S. Car Co., 117 U. S. 34,	66	Powhatan C. & C. Co. v. N. & W. Ry., 13 I. C. C. R. 69,	322
Piedmont Mfg. Co. v. Col. & G. Rd., 19 S. C. 355,	62	Pratt Lumber Co. v. C. I. & L. Ry., 10 I. C. C. R. 29,	255
Pilant v. Atchison, T. & S. F. Ry., 15 I. C. C. R. 178,	619	Preston v. Chesapeake & Ohio Ry., 16 I. C. C. R. 565,	364
Pitts & Son v. St. L. & S. F. Rd., 10 I. C. C. R. 684,	471, 606, 677, 681	Preston & Davis v. D. L. & W. Rd., 12 I. C. C. R. 115,	422, 436
Pittsburgh, C. & St. L. Ry. v. B. & O. Rd., 3 I. C. C. R. 465,	520, 833	Private Tank Car Demurrage, 13 I. C. C. R. 378,	453
Pittsburgh Plate Glass Co. v. P. C. C. & St. L. Ry., 13 I. C. C. R. 87,	529	Procter & Gamble v. C. H. & D. Ry., 9 I. C. C. R. 440,	149, 298
Planters Compress Co. v. C. C. & St. L. Ry., 11 I. C. C. R. 382,	162, 204, 206, 525	v. same, 4 I. C. C. R. 87,	162, 215
Plessy v. Ferguson, 163 U. S. 537,	561	Providence Coal Co. v. Prov. & W. Rd., 1 I. C. C. R. 107,	525
Ponca Milling Co. v. M. K. & T. Ry., 12 I. C. C. R. 26,	532	Publication Export and Import Tariffs, 10 I. C. C. R. 55,	776
Poor Grain Co. v. C. B. & Q. Ry., 12 I. C. C. R. 418,	370, 410, 411, 597, 607, 621, 624	Pueblo Trans. Co. v. So. Pac. Ry., 14 I. C. C. R. 82,	622, 687
		Pullman P. Car Co. v. Mo. Pac. Ry., 115 U. S. 587,	315
		Pyle & Sons v. East Tennessee, V. & G. Ry., 1 I. C. C. R. 473,	141, 149, 151, 162, 169, 545

[References are to pages.]

Q	Quimby v. Maine Central Rd., 13 I. C. C. R. 246,	549	Rates Corn and Corn Prod- ucts, 11 I. C. C. R. 227, 198 Rates on Cotton, 8 I. C. C. R. 121, 69, 384
R	Racine Sattley Co. v. C. M. & St. P. Ry., 16 I. C. C. R. 488, 305 Rahway Valley Rd. v. D. L. & W. Rd., 14 I. C. C. R. 191, 507 Rail & River Coal Co. v. B. & O. Rd., 14 I. C. C. R. 86, 325, 330, 333, 344, 546		Rates Kansas City, M. & B. Rd., 8 I. C. C. R. 121, 69, 384 Rates Mobile & Ohio Rd., 9 I. C. C. R. 373, 190, 384, 702 Rates Vegetables S. F. & W. Rd., 8 I. C. C. R. 585, 302 Raworth v. Northern Pacific Ry., 5 I. C. R. 234, 2 I. C. R. 614, 3 I. C. R. 857, 118 Raymond v. C. M. & St. P. Ry., 1 I. C. C. R. 230, 522
	Railroad Comm. Florida v. S. F. & W. Rd., 5 I. C. C. R. 13, 105, 208, 609		Re Advances Freight Rates, 9 I. C. R. 382, 194
	Railroad Comm. Georgia v. Clyde S. S. Co., 5 I. C. C. R. 324, 83, 91, 117		Re Alaska Water Carriers, 19 I. C. C. R. 87, 139
	Railroad Comm. Kentucky v. C. N. O. & T. P. Ry., 7 I. C. C. R. 380, 228		Re Allowances Transfer of Sugar, 14 I. C. C. R. 619, 483
	Railroad Comm. Kentucky v. L. & N. Rd., 10 I. C. C. R. 173, 53, 315, 356		Re Allowances Union Pacific Elevators, 12 I. C. C. R. 86, 385, 402, 403, 423, 493
	Railroad Comm. Ohio v. Hock- ing Valley Rd., 12 I. C. C. R. 398, 325, 565, 587		Re Annapolis, Washington & Baltimore Rd., 1 I. C. R. 315, 93
	Railroad Comm. Ohio v. Wheeling & L. E. Rd., 12 I. C. C. R. 398, 57		Re Application I. C. C. on Brimson, 4 I. C. R. 315, 56
	Railroad Comm. Wisconsin v. C. & N. W. Ry., 16 I. C. C. R. 84, 230		Re Bills of Lading, 14 I. C. C. R. 346, 274, 275
	Railroad & W. H. Comm. v. Eureka Spgs. Ry., 7 I. C. C. R. 69, 208, 823		Re Boston & M. Rd. Free Transportation, 3 I. C. R. 717, 874
	Rasmussen v. United States, 197 U. S. 516, 139		Re Canadian Pacific Rates, 8 I. C. C. R. 71, 99, 139
	Rate Schedule Form and Con- tents, 6 I. C. C. R. 267, 177, 711		Re Car Shortage, 12 I. C. C. R. 561, 309, 352, 945
	Rate Wars and Passenger Tar- iffs, 2 I. C. C. R. 513, 845		Re Charge Grand Jury, 66 Fed. Rep. 146, 858
			Re Charge Grand Jury, 151 Fed. Rep. 834, 66
			Re Charges on Fruit, 10 I. C. C. R. 360, 309, 312, 315, 374
			Re Charges on Fruit, 11 I. C. C. R. 129, 309, 319, 375, 700

[References are to pages.]

Re Chicago, St. P. & K. C. Ry., 2 I. C. C. R. 231,	197	Re Food Product Freight Rates, 4 I. C. C. R. 79,	156, 157
Re Class Rates St. Louis and Texas, 11 I. C. C. R. 238, 185,	194	Re Form and Contents Rate Schedules, 6 I. C. C. R. 267,	177, 711
Re Classifications and Tariffs A. & W. P. Rd., 3 I. C. C. R. 24,	180	Re Free Transportation B. & M. Rd., 3 I. C. R. 717,	874
Re Clergymen's Passes, 15 I. C. C. R. 45,	870	Re Free Transportation Ex- change, 12 I. C. C. R. 40,	134, 135, 861, 877
Re Commutation Tickets School Children, 17 I. C. C. R. 144,	831	Re Free Transportation News- paper Employes, 12 I. C. C. R. 16,	861
Re Complaint Illinois Central Rd., 12 I. C. C. R. 8,	876	Re Freight Pooling, 115 Fed. Rep. 588,	948
Re Corn and Corn Products, 11 I. C. C. R. 227,	198	Re Freight Rate Advances, 9 I. C. C. R. 382,	194
Re Cotton Rates, 8 I. C. C. R. 121,	69, 384	Re Freight Rates Food Prod- ucts, 4 I. C. C. R. 79,	156, 157
Re Debs, 158 U. S. 564,	66	Re Freight Rates Memphis & Arkansas, 11 I. C. C. R. 180,	230, 1037
Re Demurrage Charges Pri- vate Tank Cars, 13 I. C. C. R. 378,	453	Re Fruit Charges, 10 I. C. C. R. 360,	309, 312, 315, 374
Re Differential Freight Rates, 11 I. C. C. R. 13,	1037	Re Fruit Charges, 11 I. C. C. R. 129,	309, 319, 375, 700
Re Elevator Allowances Union Pacific Ry., 12 I. C. C. R. 86, 385, 402, 403, 423,	493	Re Grain Rates, 7 I. C. C. R. 240,	214
Re Exchange Free Transpor- tation, 12 I. C. C. R. 40,	134, 135, 861, 877	Re Grand Jury Charge, 66 Fed. Rep. 146,	858
Re Export Corn Rates E. and W. Miss. River, 8 I. C. C. R. 185,	551, 774	Re Grand Jury Charge, 151 Fed. Rep. 834,	66
Re Export and Import Tariff Publication, 10 I. C. C. R. 55,	776	Re Grand Trunk Ry. Investi- gation, 3 I. C. C. R. 87,	80, 81, 99, 139
Re Express Companies, 1 I. C. C. R. 349,	95	Re Gulf, Colorado & S. F. Ry., 13 I. C. C. R. 134,	984
Express Co. Contracts for Men, 16 I. C. C. R. 246,	488, 878	Re Hennick, 5 Macky 489,	67
Re Fish Commission, 1 I. C. C. R. 21,	482	Re Illinois Central Rd. Com- plaint, 12 I. C. C. R. 8,	876
Re Export and Domestic Rates, 8 I. C. C. R. 214,	776	Re Immigrant Transportation, 10 I. C. C. R. 13,	954
Food Products, 4 I. C. C. R. 48,	214	Re Indian Supplies, 1 I. C. C. R. 15,	483

[References are to pages.]

Re Interstate Comm. Comm. and Brimson, 4 I. C. C. R. 315,	56	Re Rates Chicago, St. P. & K. C. Ry., 2 I. C. C. R. 231,	197
Re Investigation Grand Trunk Ry., 3 I. C. C. R. 87,		Re Rates on Cotton, 8 I. C. C. R. 121,	69, 384
	80, 81, 99, 139	Re Rates Kansas City, M. & B. Rd., 8 I. C. C. R. 121,	69, 384
Re Joint Rates Terminal Roads, 10 I. C. C. R. 385,		Re Rates Mobile & Ohio Rd., 9 I. C. C. R. 373,	190, 384, 702
	497, 498, 569, 571, 572, 573, 773	Re Rates on Vegetables, 8 I. C. C. R. 535,	302
Re Kansas City, M. & B. Rd. Rates, 8 I. C. C. R. 121,	69, 384	Re Released Rates, 13 I. C. C. R. 550,	273, 479
Re Louisville & Nashville Rd., 1 I. C. C. R. 84,	180	Re Religious Teachers, 1 I. C. C. R. 21,	870
Re Memphis Arkansas Freight Rates, 11 I. C. C. R. 180, 230,	1037	Re St. Louis Millers Associa- tion, 1 I. C. C. R. 20,	399
Re Milling-in-Transit Rates, 17 I. C. C. R. 113,	391	Re St. Louis Texas Class Rates, 11 I. C. C. R. 238,	185, 194, 212
Re Mobile & Ohio Rd. Rates, 9 I. C. C. R. 373,	190, 384, 702	Re Salt Transportation, 10 I. C. C. R. 1,	571
Re Modification of Section 6 of Act,	685	Re Salt Transportation, 10 I. C. C. R. 148,	500
Re Newspaper Employes Transportation, 12 I. C. C. R. 16,	861	Re School Children's Tickets, 17 I. C. C. R. 144,	831
Re Party-Rate Tickets, 12 I. I. C. R. 95,	556, 835	Re Shortage of Cars, 12 I. C. C. R. 561,	309, 352, 945
Re Passenger Rates Portland, Ore., 16 I. C. C. R. 300,	360	Re Southern Ry. and S. S. As- sociation, 1 I. C. C. R. 31,	215, 216
Re Passenger Tariffs and Rate Wars, 2 I. C. C. R. 513,	845	Re Substitution of Tonnage, 18 I. C. C. R. 280,	393, 474
Re Passenger Tariffs, 2 I. C. C. R. 649,	851	Re Sugar Transfer Allow- ances, 14 I. C. C. R. 619,	493
Re Passes to Clergymen, 15 I. C. C. R. 45,	870	Re Tank Car Demurrages, 13 I. C. C. R. 378,	453
Re Pooling of Freights, 115 Fed. Rep. 588,	948	Re Tariffs and Classifications A. & W. P. Rd., 3 I. C. C. R. 24,	180
Re Portland, Ore., Passenger Rates, 16 I. C. C. R. 300,	360	Re Terminal Joint Charges, 10 I. C. C. R. 385,	
Re Publication Export and Im- port Tariffs, 10 I. C. C. R. 55,	776		497, 498, 569, 571, 572, 573, 773
Re Rate Schedule Form and Contents, 6 I. C. C. R. 267,			
	177, 711		
Re Rate Wars and Passenger Tariffs, 2 I. C. C. R. 513,	845		

[References are to pages.]

Re Through Passenger Rates Portland, Ore., 16 I. C. C. R. 300, 360	Reynolds v. Western N. Y. & P. Rd., 1 I. C. C. R. 685, 217
Re Through Routes and Through Rates, 12 I. C. C. R. 164, 176, 177, 238, 354 355, 391, 773	Rhode Island Egg & Butter Co. v. L. S. & M. S. Ry., 6 I. C. R. 176, 164
Re Tonnage Substitution, 18 I. C. C. R. 280, 393, 474	Rhodes v. Iowa, 170 U. S. 412 436, 437, 445, 446
Re Transportation of Immi- grants, 10 I. C. C. R. 13, 954	Rice v. Cincinnati, W. & B. Rd., 5 I. C. C. R. 193, 199, 341, 527
Re Transportation of Salt, 10 I. C. C. R. 1, 571	Rice v. Georgia Rd., 14 I. C. C. R. 75, 299
Re Transportation of Salt, 10 I. C. C. R. 148, 500	Rice v. Louisville & Nashville Rd., 1 I. C. C. R. 503, 309, 318, 494
Re Underbilling, 1 I. C. C. R. 633, 570	Rice, R. & W. v. W. N. Y. & P. Rd., 2 I. C. C. R. 389, 211, 285, 532
Re Union Pacific Elevator Al- lowances, 12 I. C. C. R. 86, 385, 402, 403, 423, 493	v. same, 4 I. C. C. R. 131, 312, 527, 541
Re U. S. Fish Commission, 1 I. C. C. R. 21, 482	Richmond Elevator Co. v. P. M. Rd., 10 I. C. C. R. 629, 322, 435, 541, 632
Re Vegetable Rates S. F. & W. Ry., 8 I. C. C. R. 585, 302	Riddle Dean & Co. v. B. & O. Rd., 1 I. C. C. R. 608, 512
Re Water Carriers, 15 I. C. C. R. 205, 67, 79, 107, 109, 110, 138	v. N. Y. L. E. & W. Rd., 1 I. C. C. R. 594, 543
Re Water Carriers Alaska, 19 I. C. C. R. 87, 139	v. Pittsburgh & L. E. Rd., 1 I. C. C. R. 374, 321
Re Wilson, 10 N. Mex. 32, 67	v. same, 1 I. C. R. 773, 48
Rea v. Mobile & Ohio Rd., 7 I. C. C. R. 43, 161, 545, 686	Riverside Mills v. Atlantic Coast Line, 168 Fed. Rep. 987, 1, 478, 479
Red Cloud Min. Co. v. So. Pac. Ry., 9 I. C. C. R. 216, 410	Robbins v. Shelby District, 120 U. S. 489, 66
Red Rock Fuel Co. v. B. & O. Rd., 11 I. C. C. R. 438, 507, 565	Rogers & Co. v. Phila. & R. Ry., 12 I. C. C. R. 309, 544, 591, 604, 605, 635
Rehberg & Co. v. Erie Rd., 17 I. C. C. R. 508, 242	Roman Oolitic Stone Co. v. Vandalia Rd., 13 I. C. C. R. 115, 297
Released Rates, Re, 13 I. C. C. R. 550, 273, 479	Rosenbaum Grain Co. v. M. K. & T. Ry., 15 I. C. C. R. 499, 287
Religious Teachers, Re, 1 I. C. R. 21, 870	
Rend v. C. & M. V. Ry., 2 I. C. C. R. 540, 211	

[References are to pages.]

Royal Brg. Co. v. Adams Ex- press Co., 15 I. C. C. R. 255,	554	Savannah Bureau v. C. & S. Ry., 7 I. C. C. R. 601,	210, 823
Royal C. & C. Co. v. Southern Ry., 13 I. C. C. R. 441,	329	Savannah F. & W. Ry. v. Bun- dick, 94 Ga. 775,	410
Ruttle v. Pere Marquette Rd., 13 I. C. C. R. 179,	320	Savannah F. & W. Ry. Vege- table Rates, 8 I. C. C. R. 585,	302
S		Savannah Freight Bureau v. L. & N. Rd., 8 I. C. C. R. 377,	550
Saginaw Board of Trade v. Grand Trunk Ry., 17 I. C. C. R. 128,	250, 255	Savery & Co. v. N. Y. C. & H. R. Rd., 2 I. C. C. R. 338,	555, 875
St. Clair County v. I. Sand & Car Co., 192 U. S. 454,	138	Sawyer & Austin v. St. L. I. M. & S. Ry., 19 I. C. C. R. 141,	200
St. Louis Hay & Grain Co. v. C. B. & Q. Ry., 11 I. C. C. R. 82,	401, 435, 436, 449, 591	School Children Tickets, 17 I. C. C. R. 144,	831
v. Ill. Cent. Rd., 11 I. C. C. R. 486,	210, 396	Schultz-Hansen Co. v. So. Pac. Ry., 18 I. C. C. R. 234,	423, 697, 706
v. Mobile & Ohio Rd., 11 I. C. C. R. 90,	210, 386, 442, 546	Schumacher v. C. & N. W. Ry., 207 Ill. 199,	450
St. Louis Millers Association, Re, 1 I. C. C. R. 20,	399	Schumacher Milling Co. v. C. R. I. & P. Ry., 6 I. C. C. R. 61,	141, 142, 149, 164 169, 197, 545
St. Louis S. W. Ry. v. Arkan- sas, 217 U. S. 136,	343	Schwager & Nettleton v. Great Northern Ry., 12 I. C. C. R. 521,	428, 705
v. Carden, 34 S. W. 145,	419	Scofield v. Lake Shore & M. S. Ry., 2 I. C. C. R. 90,	204, 309, 314, 318, 341, 494
St. Louis Texas Class Rates, 11 I. C. C. R. 238,	185, 194, 212	Sere v. Pitot, 6 Cranch 332,	74
St. Louis & S. F. Rd. v. Had- ley, 168 Fed. Rep. 317,	189	Shamberg v. Delaware, L. & W. Rd., 4 I. C. C. R. 630,	569
v. Ostrander, 66 Ark. 567,	410	Shiel & Co. v. Illinois Central Rd., 12 I. C. C. R. 211,	389, 546, 618, 702
Salt Transportation, Re, 10 I. C. C. R. 1,	571	Shinkle, Wilson & Kreis v. L. & N. Rd., 67 Fed. Rep. 690,	55
Salt Transportation, Re, 10 I. C. C. R. 148,	500	Shippers Bureau Newark v. N. Y. O. & W. Rd., 15 I. C. C. R. 264,	192
San Antonio & A. P. Ry. v. Clements, 20 Tex. Civ. App. 498,	410	Shortage of Cars, Re, 12 I. C. C. R. 561,	309, 352
San Bernardino Board of Trade v. A. T. & S. F. Ry., 4 I. C. C. R. 104,	223		
Saunders & Co. v. Southern Express Co., 18 I. C. C. R. 415,	230		

[References are to pages.]

Sidman v. Richmond & Danville Rd., 3 I. C. C. R. 512,	555, 827	Southern Pacific Ry. v. Colorado Fuel & I. Co., 101 Fed. Rep. 779,	201
Sinnott v. Davenport, 22 How. 227,	2, 66	v. I. C. C., 200 U. S. 536, 233,	957
Slater v. Northern Pacific Ry., 2 I. C. C. R. 359,	879	Southern Pine Lumber Co. v. Southern Ry., 14 I. C. C. R. 195,	617
Sligo Iron Co. v. A. T. & S. F. Ry., 17 I. C. C. R. 139,	570	Southern Ry. v. Greensboro Ice Co., 134 Fed. Rep. 82,	438
Smeltzer v. St. Louis & S. F. Rd., 158 Fed. Rep. 649, 478,	479	v. Harrison, 119 Ala. 539,	410, 411
Smith v. Northern Pacific Ry., 1 I. C. C. R. 208,	554, 876	v. St. Louis Hay & Grain Co., 214 U. S. 297,	386
Smith v. Turner (Passenger Cases), 7 How. 283,	2, 66	v. Tift, 206 U. S. 428	185, 192, 602
Smyth v. Ames (Nebraska Case), 169 U. S. 466,	188, 190	v. Wilcox, 99 Va. 394,	410
Smyth v. Ames, 171 U. S. 361,	201	Southern Ry. & Steamship Association, Re, 1 I. C. C. R. 31,	215, 216
Snook v. Central R. R. of N. J., 17 I. C. C. R. 375,	434	Spillers & Co. v. Louisville & Nashville Rd., 8 I. C. C. R. 364,	697
Social Circle Case (C. N. O. & T. P. Ry. v. I. C. C.), 162 U. S. 184, 91, 92, 126, 129, 249,	519	Spokane v. Northern Pacific Ry., 15 I. C. C. R. 376,	192
Society A. F. & O. H. v. U. S. Express Co., 12 I. C. C. R. 121,	183	Spratlin v. St. Louis S. W. Ry., 76 Ark. 82,	419
Solvay Process Co. v. D. L. & W. Rd., 14 I. C. C. R. 246,	493, 501	Sprigg v. Baltimore & Ohio Rd., 8 I. C. C. R. 443,	829, 851, 992
Sondheimer Co. v. Illinois Central Rd., 17 I. C. C. R. 60, 250,	251	Springer v. El Paso & S. W. Rd., 17 I. C. C. R. 322,	286
South Canion Coal Co. v. C. & S. Ry., 17 I. C. C. R. 286,	218	Squire & Co. v. Mass. Central Rd., 3 I. C. R. 515,	534
South Carolina v. Gaillard, 101 U. S. 437,	122	Standard Lime Co. v. Cumberland V. Rd., 15 I. C. C. R. 620,	310, 374, 550
Southern Cotton Oil Co. v. Southern Ry., 19 I. C. C. R. 79,	614	Star Grain & Lumber Co. v. A. T. & S. F. Ry., 14 I. C. C. R. 364,	551, 942
v. L. & N. Rd., 18 I. C. C. R. 180,	614	v. same, 17 I. C. C. R. 338,	498, 499, 500
Southern Indiana Exp. Co. v. U. S. Exp. Co., 92 Fed. Rep. 1022,	96	State v. Atchison, T. & S. F. Ry., 176 Mo. App. 687,	400, 438

[References are to pages.]

State ex rel. R. R. & W. H. Comm. v. C. St. P. M. & O. Ry., 40 Minn. 267, 2 I. C. R. 519,	72	Terminal Rd. Joint Rates, 10 C. C. R. 385,	
Sternberger v. Cape Fear & Y. V. Rd., 29 S. C. 510,	72	497, 498, 569, 571, 572, 573, 773	
Stock Yards C. & L. Co. v. C. M. & St. P. Ry., 16 I. C. C. R. 366,	241	Texas Cement Plaster Co. v. St. L. & S. F. Rd., 12 I. C. C. R. 68,	631
v. M. K. & T. Ry., 17 I. C. C. R. 295,	612	Texas & Pacific Ry. v. Abilene Cotton Oil Co., 204 U. S. 426,	
Stoutenburgh v. Hennick, 129 U. S. 141,	67	58, 258, 339, 409, 433, 581, 585	
Stowe Fuller Co. v. Pennsylvania Co., 12 I. C. C. R. 216,		587, 589, 590, 600, 602, 616	
148, 199, 200		v. Cisco Oil Mill, 204 U. S. 449,	685
Strauss v. American Express Co., 19 I. C. C. R. 112,	553	v. Clarke, 4 Tex. Civ. App. 611,	93
Substitution Tonnage, Re, 18 I. C. C. R. 280,	393, 474	v. Cox, 145 U. S. 593,	116
Suñern Hunt & Co. v. I. D. & W. Rd., 7 I. C. C. R. 255,		v. I. C. C., 162 U. S. 197,	
288, 296, 299, 411, 697, 698		44, 64, 82, 119, 130, 197, 228	
Sugar Transfer Allowances, Re, 14 I. C. C. R. 619,	493	516, 520, 521, 529	
Sunderland Bros. Co. v. M. K. & T. Ry., 18 I. C. C. R. 425,	290	530, 531, 532, 552	
v. Pere Marquette Rd., 16 I. C. C. R. 450,	612	v. Mugg, 202 U. S. 242,	
Sunnyside Coal M. Co. v. D. & R. G. Rd., 16 I. C. C. R. 558,	394, 621	408, 472, 621	
Swift & Co. v. Chicago & Alton Rd., 16 I. C. C. R. 426,	617	Thatcher Mfg. Co. v. N. Y. C. & H. R. Rd., 16 I. C. C. R. 126,	624
		Thompson v. Pennsylvania Rd., 10 I. C. C. R. 640,	322
		Through Passenger Rates Portland, Ore., 16 I. C. C. R. 300,	360
		Through Rates and Through Routes, 12 I. C. C. R. 164,	
		176, 177, 238, 354, 355, 391, 773	
		Thurber v. N. Y. C. & H. R. Rd., 3 I. C. C. R. 473,	
		148, 157, 158, 162, 181, 183, 194, 204	
		Tift v. Southern Ry., 138 Fed. Rep. 753, 206 U. S. 428,	
		157, 192, 201	
		v. same, 10 I. C. C. R. 548,	
		185, 191, 192, 193, 201, 212, 992	
		Tileston Milling Co. v. Nor. Pac. Ry., 8 I. C. C. R. 346,	226
		Tonnage Substitution, Re, 18 I. C. C. R. 280,	393, 474

[References are to pages.]

Topeka Banana D. A. v. St. L. & S. F. Rd., 13 I. C. C. R. 620, 292, 495	United States v. Baltimore & Ohio Rd., 165 Fed. Rep. 113, 542
Tozer v. United States, 52 Fed. Rep. 917, 227	v. Boisdore, 8 How. 121, 122
Traders & Travelers Union v. P. & R. Ry., 1 I. C. C. R., 122, 53, 58, 418	v. Chicago & Alton Rd., 148 Fed. Rep. 646, 156 Fed. Rep. 558, 568, 575, 681
Trades League Philadelphia v. P. W. & B. Rd., 8 I. C. C. R. 368, 160	v. Chicago, I. & L. Rd., 163 Fed. Rep. 114, 471, 525
Traer, Receiver, v. Chicago & Alton Rd., 13 I. C. C. R. 451, 326	v. Chicago & N. Rd., 157 Fed. Rep. 321, 249
v. Chicago, B. & Q. Ry., 14 I. C. C. R. 165, 331	v. Chicago & N. W. Ry., 127 Fed. Rep. 785, 520, 834
Traffic Bur. Merch. Exch. v. C., B. & Q. Ry., 14 I. C. C. R. 317, 402, 546	v. Coombs, 12 Pet. 72, 2, 3
Transportation Fruit, 10 I. C. C. R. 180 309, 312, 315, 374	v. De Coursey, 82 Fed. Rep. 302, 117
Transportation Fruit, 11 I. C. C. R., 129, 309, 319, 375, 700	v. Delaware, L. & W. Rd., 152 Fed. Rep. 269, 70, 569
Transportation Immigrants, 10 I. C. C. R., 13, 954	v. Hanley, 71 Fed. Rep. 672, 520
Troy Case (I. C. C. v. Ala. Mid. Ry.), 168 U. S. 144, 181, 261, 516, 517, 520, 552, 835	v. Illinois Terminal Rd., 168 Fed. Rep. 546, 98, 248, 249, 677
Truck Farmers Charleston v. N. E. Rd. (S. C.), 6 I. C. R., 295, 310, 377	v. Jackson, 4 N. Y. Leg. Ob. 450, 3
Tyler, Ex Parte, 149 U. S. 164, 115	v. Joint Traffic Association, 171 U. S. 505, 994
U	v. McFarland, 20 App. D. C. 552, 76
Underbilling, Re, 1 I. C. C. R. 633, 570	v. M. C. Rd., 122 Fed. Rep. 544, 57
Union Pacific Elevator Allow- ances, 12 I. C. C. R. 86, 385, 402, 403, 423, 493	v. Mellen, 53 Fed. Rep. 229, 228
Union Pacific Ry. v. Good- ridge, 149 U. S. 680, 192	v. Morrison, 4 N. Y. Leg. Ob. 333, 3
United States v. A., T. & S. F. Ry., 142 Fed. Rep. 176, 993	v. Morsman, 42 Fed. Rep. 448, 96
v. same, 163 Fed. Rep. 111, 470	v. Moseley, 187 U. S. 322, 25
	v. New York C. & H. R. Rd., 153 Fed. Rep. 630, 774
	v. Norfolk & Western Ry., 109 Fed. Rep. 831, 322, 543
	v. same, 143 Fed. Rep. 266, 543
	v. Pennsylvania Rd., 153 Fed. Rep. 625, 569
	v. Pope, 1 Newb. 256, 3

[References are to pages.]

United States v. Railroad Bridge Co., 3 McLean 517,	3
v. Seaboard Air Line, 82 Fed. Rep., 563,	93
v. Standard Oil Co., 148 Fed. Rep. 719,	
437, 447, 477, 568, 575, 1034	
v. Standard Oil Co. of Indiana, 155 Fed. Rep. 269,	88
v. The James Morrison, 1 Newb. 241,	3
v. Tozer, 39 Fed. Rep. 369,	
519, 525, 533	
v. Trans-Missouri Freight Assn., 166 U. S. 290,	
956, 993, 994	
v. Vacuum Oil Co., 153 Fed. Rep. 598,	568
v. Wells Fargo & Co., 161 Fed. Rep. 606,	96, 490, 518
v. William Pope, 1 Newb. 256,	3
v. Williams, 159 Fed. Rep. 310,	1001
v. Wood, 145 Fed. Rep. 405, 105	
United States ex rel. Atty. Gen. v. D. & H. Co., 213 U. S. 366, 164 Fed. Rep. 215,	974
ex rel. I. C. C. v. C., K. & S. Rd., 81 Fed. Rep. Rep. 783,	971
ex rel. I. C. C. v. Seaboard Air Line, 88 Fed. Rep. 955,	972
ex rel. Kingwood Coal Co. v. W. V. N. Rd., 125 Fed. Rep. 252, 134 Fed. Rep. 198,	328, 543
ex rel. Morris v. D., L. & W. Rd., 40 Fed. Rep. 101,	317

United States ex rel. N. W. Warehouse Co. v. O. R. & N. Co., 159 Fed. Rep. 975,	332
ex rel. Pitcairn Coal Co. v. B. & O. Rd., 165 Fed. Rep. 113,	339
United States Fish Commission, Re, 1 I. C. C. R. 21,	482
Utica Traffic Bureau v. N. Y. C. & H. R. Rd., 18 I. C. C. R. 271,	423

V

Valley Flour Mills v. A., T. & S. F. Ry., 16 I. C. C. R. 73,	549
Van Patten v. C. M. & St. P. Ry., 81 Fed. Rep. 545,	609, 610
Vancouver, The, 18 Int. Rev. Rec. 103,	3
Veazie v. Moore, 14 How. 568,	3
Vegetable Rates, S. F. & W. Ry., 8 I. C. C. R. 585,	302
Vermont State Grange v. B. & L. Rd., 1 I. C. C. R. 158,	98, 270
Victor Fuel Co. v. A. T. & S. F. Ry., 14 I. C. C. R. 119,	706
Voorhees v. Atlantic Coast Line, 16 I. C. C. R. 42,	224

W

Wabash, St. L. & P. Rd. v. Illinois, 118 U. S. 557,	
16, 66, 71, 87, 437, 446	
Walsh v. New York, N. H. & H. Rd., 173 Fed. Rep. 494,	989
Ward v. Maryland, 12 Wall. 415,	5
Warner v. N. Y. C. & H. R. Rd., 4 I. C. C. R. 32,	153, 156
Warren Ehret Co. v. C. R. R. N. J., 8 I. C. C. R. 598,	229

[References are to pages.]

Warren Mfg. Co. v. Southern Ry., 12 I. C. C. R. 381,	213, 992	Wight v. United States, 167 U. S. 512,	425, 493, 516, 517, 835
Washer Grain Co. v. Mo. Pac. Ry., 15 I. C. C. R. 147,		Wilhoit v. M. K. & T. Ry., 12 I. C. C. R. 139,	186
	57, 114, 579, 588	Williams Co. v. V. S. & P. Ry., 16 I. C. C. R. 482,	178, 211
Washington Broom & W. W. Co. v. C. R. I. & P. Ry., 15 I. C. C. R. 219,	364, 624, 699	Wil'son v. Blackbird C. M. Co., 2 Pet. 245,	2
Water Carriers, Re, 15 I. C. C. R. 205, 67, 79, 107, 109, 110,	138	Willson v. Rock Creek Ry., 7 I. C. C. R. 83,	67, 83, 85, 88
Water Carriers in Alaska, Re, 19 I. C. C. R. 81,	139	Willson Bros. v. Norfolk So. Rd., 19 I. C. C. R. 293,	627
Waxelbaum & Co. v. Atlantic Coast Line, 12 I. C. C. R. 178,	289, 307, 310, 374, 450, 550	Wilson Produce Co. v. Penn. Rd., 14 I. C. C. R. 170,	438, 444
Weber Club v. Oregon Short Line, 17 I. C. C. R. 212,	558	v. same, 16 I. C. C. R. 116,	443
Weimer & Rich v. C. & N. W. Ry., 12 I. C. C. R. 462,	287	Wilson, Re, 10 N. Mex. 32,	67
Weleetka L. & P. Co. v. Ft. S. & W. Ry., 12 I. C. C. R. 503,	475, 507, 509	Winters Metallic Paint Co. v. C. M. & St. P. Ry., 16 I. C. C. R. 587,	506
Welton v. Missouri, 91 U. S., 275,	5, 65, 66, 67	Wiswall v. Sampson, 14 How. 52,	115
West Imp. Club v. O. & C. B. Ry., 17 I. C. C. R. 239,	85	Withers v. Buckley, 20 How. 84,	3
Western N. Y. & P. Rd. v. Penn. Refining Co., 137 Fed. Rep. 343,	584, 609	Wisconsin, M. & P. Rd. v. Jacobson, 179 U. S. 287,	939
Western Oregon Lbr. Mfrs. v. So. Pac. Ry., 14 I. C. C. R. 61,	216	Wood Butter Co. v. C. C. C. & St. L. Ry., 16 I. C. C. R. 374,	240
Wheeling Bridge Case, 13 How. 518,	2, 3, 5	Woodburn v. Kilburn Co., 1 Abb. 158,	3
Wheeling Corrugating Co. v. B. & O. Rd., 18 I. C. C. R. 125,	179	Woodman v. Kilburn Mfg. Co., 1 Bill. 546,	3
White & Co. v. B. & O. S. W. Rd., 12 I. C. C. R. 307,		Woodward & Dickerson v. L. & N. Rd., 15 I. C. C. R. 170	
	288, 301, 302	(6 Cir. 1910),	367, 602
Wholesalers F. & P. Assn. v. A. T. & S. F. Ry., 14 I. C. C. R. 410,	224, 423, 436	Worcester Exc. Car Co. v. Penn. Rd., 3 I. C. C. R. 577,	312, 315, 318
		Wrigley v. C. C. C. & St. L. Ry., 10 I. C. C. R. 412,	205, 292
		Wylie v. Northern Pacific Ry., 11 I. C. C. R. 145,	135, 245, 360, 562

[References are to pages.]

Wyman Partridge & Co. v. B.

Y

& M. Rd., 13 I. C. C. R. 258, 274

v. same, 15 I. C. C. R. 577, 274

Yeaton v. United States, 5

Cranch 281,

122

CITATIONS FROM THE TARIFF CIRCULARS AND CONFERENCE RULING BULLETINS ISSUED BY THE INTERSTATE COMMERCE COMMISSION.

TARIFF CIRCULAR 15-A.

Rule 5.....	235
Rule 36.....	822
Rule 41.....	24
Rule 63.....	482
Rule 66.....	877
Rule 74.....	457
Rule 77.....	284, 303
Rule 81.....	452
Rule 86.....	280

TARIFF CIRCULAR 16-A.

In general.....	790
Rule 1.....	790
Rule 2.....	790
Rule 3.....	790, 791, 792
Rule 4.....	359, 360, 793, 794, 795
Rule 5.....	796
Rule 6.....	797
Rule 7.....	798
Rule 8.....	798, 799
Rule 9.....	800, 801, 802
Rule 10.....	789
Rule 11.....	801
Rule 12.....	803
Rule 13.....	782
Rule 14.....	783, 784
Rule 15.....	809
Rule 16.....	806, 807, 808

Rule 17.....	811
Rule 18.....	811, 812
Rule 19.....	813
Rule 20.....	814
Rule 21.....	814, 815
Rule 22.....	816
Rule 24.....	817, 818
Rule 25.....	818
Rule 26.....	785
Rule 27.....	788
Rule 28.....	788
Rule 29.....	786
Rule 30.....	789
Rule 31.....	786
Rule 32.....	941
Rule 33.....	369
Rule 35.....	482
Rule 36.....	470
Rule 40.....	485
Rule 41.....	486
Rule 42.....	53
Rule 46.....	280

TARIFF CIRCULAR 17-A.

Circular in general.....	176, 710, 821, 887
Rule 1.....	712
Rule 2.....	712
Rule 3.....	712, 713, 714
Rule 4.....	359, 360, 715, 716, 717 718, 719, 720, 721, 722

[References are to pages.]

Rule 5.....	239, 754	Rule 48.....	927
Rule 6.....	709	Rule 49.....	927, 928
Rule 7.....	179, 723, 724	Rule 50.....	929, 930
Rule 8.....	733, 734	Rule 51.....	931, 932
Rule 9.....	724, 725, 726, 727, 728 729, 730	Rule 52.....	915, 916, 917, 918
Rule 10.....	698	Rule 53.....	838, 839
Rule 11.....	766, 767, 768, 769, 770	Rule 54.....	689
Rule 12.....	768	Rule 55.....	234, 845, 846
Rule 13.....	678	Rule 56.....	208, 694
Rule 14.....	678, 679, 680	Rule 57.....	695, 822
Rule 15.....	756, 757	Rule 58.....	691, 692, 693
Rule 16.....	738	Rule 59.....	761
Rule 17.....	736, 737	Rule 62.....	837, 920
Rule 18.....	738, 743	Rule 63.....	695
Rule 19.....	744	Rule 64.....	779, 845, 919
Rule 20.....	745	Rule 65.....	166
Rule 21.....	747	Rule 66.....	300, 303, 704
Rule 22.....	747, 748	Rule 67.....	397, 398
Rule 23.....	748, 749	Rule 69.....	841, 842
Rule 24.....	749	Rule 70.....	760
Rule 25.....	749, 750	Rule 71.....	777, 826, 932, 933
Rule 26.....	751, 752	Rule 72.....	753, 930, 931
Rule 27.....	753, 754, 755, 756	Rule 73.....	840
Rule 28.....	888	Rule 74.....	383, 486, 487, 699
Rule 29.....	710, 711, 887, 888	Rule 75.....	700
Rule 30.....	888, 889	Rule 76.....	393
Rule 31.....	889	Rule 83.....	761
Rule 32.....	889	Supplement 1.....	240, 303, 753
Rule 33.....	890, 891		
Rule 34.....	892, 893, 894, 895, 896		
Rule 35.....	897		
Rule 36.....	908		
Rule 37.....	903, 904		
Rule 38.....	898, 899, 900, 901, 902, 903		
Rule 39.....	909, 910		
Rule 40.....	910, 911		
Rule 41.....	883, 884, 885, 886		
Rule 42.....	905, 906, 912		
Rule 43.....	922		
Rule 44.....	923, 924		
Rule 45.....	924, 925		
Rule 46.....	925, 926		
Rule 47.....	926, 927		

CONFERENCE RULING BULLETIN No. 4.

Rule 1.....	866
Rule 2.....	707
Rule 3.....	474
Rule 5.....	396
Rule 6.....	394
Rule 7.....	576
Rule 8.....	458
Rule 10.....	1034
Rule 11.....	246
Rule 12.....	730
Rule 13.....	752
Rule 14.....	246, 247

[References are to pages.]

Rule 15.....	639	Rule 73.....	732
Rule 16.....	474	Rule 74.....	983
Rule 17.....	389	Rule 75.....	840
Rule 19.....	706	Rule 76.....	844
Rule 20.....	415	Rule 77.....	394
Rule 22.....	484	Rule 78.....	496, 705
Rule 24.....	826	Rule 79.....	510
Rule 25.....	628	Rule 80.....	391
Rule 26.....	832	Rule 81.....	832
Rule 27.....	832	Rule 82.....	839
Rule 28.....	844	Rule 83.....	368
Rule 29.....	53, 710	Rule 84.....	179
Rule 30.....	968	Rule 86.....	684
Rule 31.....	457	Rule 87.....	484
Rule 32.....	452	Rule 88.....	982
Rule 33.....	482, 758	Rule 89.....	98
Rule 34.....	482, 488	Rule 90.....	627
Rule 35.....	879	Rule 91.....	361
Rule 36.....	759	Rule 92.....	865
Rule 37.....	869	Rule 93.....	371
Rule 39.....	456	Rule 95.....	860, 865, 961
Rule 41.....	943	Rule 96.....	458
Rule 42.....	485	Rule 97.....	426
Rule 44.....	842	Rule 98.....	242
Rule 45.....	562	Rule 99.....	831
Rule 47.....	731	Rule 100.....	731
Rule 48.....	471	Rule 102.....	864, 866
Rule 49.....	639	Rule 104.....	904
Rule 50.....	734	Rule 105.....	844
Rule 51.....	843	Rule 106.....	758
Rule 52.....	232	Rule 107.....	878, 915
Rule 53.....	392	Rule 108.....	982
Rule 56.....	983	Rule 109.....	865
Rule 57.....	396	Rule 110.....	576
Rule 58.....	570	Rule 111.....	640
Rule 59.....	332	Rule 112.....	867
Rule 60.....	843	Rule 113.....	372, 846
Rule 62.....	780, 836	Rule 115.....	843
Rule 64.....	427	Rule 116.....	844
Rule 68.....	639	Rule 117.....	461
Rule 69.....	943	Rule 118.....	483
Rule 70.....	735	Rule 119.....	391
Rule 71.....	836	Rule 120.....	636
Rule 72.....	383	Rule 121.....	510

[References are to pages.]

Rule 122.....	453, 454, 455	Rule 171.....	867
Rule 123.....	455	Rule 172.....	238
Rule 124.....	489	Rule 173.....	860
Rule 125.....	841	Rule 174.....	860
Rule 126.....	618	Rule 176.....	483
Rule 127.....	634	Rule 177.....	920
Rule 131.....	709	Rule 178.....	832
Rule 132.....	496	Rule 179.....	869
Rule 133.....	472	Rule 180.....	775
Rule 134.....	879	Rule 181.....	393
Rule 135.....	460	Rule 182.....	853
Rule 136.....	633	Rule 185.....	484
Rule 137.....	626	Rule 186.....	626
Rule 138.....	369, 839	Rule 187.....	474
Rule 140.....	371	Rule 188.....	476
Rule 141.....	722	Rule 189.....	869
Rule 142.....	460	Rule 190.....	365, 626
Rule 143.....	365, 627	Rule 191.....	458
Rule 144.....	457	Rule 193.....	861
Rule 145.....	461, 710	Rule 196.....	863
Rule 146.....	710	Rule 197.....	89
Rule 147.....	232	Rule 198.....	628
Rule 149.....	1046	Rule 201.....	243
Rule 150.....	868, 869	Rule 203.....	393
Rule 151.....	577	Rule 205.....	629
Rule 153.....	523	Rule 206.....	1040, 1041
Rule 154.....	852	Rule 207.....	470
Rule 156.....	474	Rule 208.....	872, 876
Rule 157.....	863	Rule 209.....	941
Rule 158.....	864	Rule 210.....	49
Rule 160.....	206	Rule 211.....	53
Rule 162.....	102	Rule 213.....	369
Rule 163.....	577	Rule 214.....	362, 628
Rule 164.....	853	Rule 215.....	242, 243, 825
Rule 165.....	865	Rule 217.....	485
Rule 166.....	394	Rule 218.....	872
Rule 167.....	636	Rule 221.....	576, 845
Rule 168.....	366	Rule 223.....	447, 453
Rule 169.....	879	Rule 224.....	488
Rule 170.....	219	Rule 225.....	523

**CLAUSES IN FEDERAL CONSTITUTION RELATING TO
AND AFFECTING THE INTERNAL AND FOREIGN
COMMERCE OF THE UNITED STATES.**

"The Congress shall have power * * * to regulate commerce with foreign nations and among the several States, and with the Indian Tribes." Article 1, Section 8, Paragraph 3.

"The Congress shall have power * * * to exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." Article 1, Section 8, Paragraph 17.

"The Congress shall have power to dispose of and make all needful rules and regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular State." Article 4, Section 3, Paragraph 2.

"No tax or duty shall be laid on articles exported from any State." Article 1, Section 9, Paragraph 5.

"No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall any vessel bound to, or from, one State, be obliged to enter, clear, or pay duty in another." Article 1, Section 9, Paragraph 6.

"The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Article 4, Section 2, Paragraph 1.

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Amendment XIV, Section 1 (declared ratified July 28, 1868).

"This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the Land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding." Article 6, Paragraph 2.

"The Congress shall have power * * * to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this Constitution in the Government of the United States, or in any department or office thereof." Article 1, Section 8, Paragraph 18.

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Amendment X (declared ratified 1791).



FEDERAL REGULATION OF INTERSTATE TRANSPORTATION

CHAPTER I.

HISTORICAL ANTECEDENTS.

"The act to regulate commerce¹ approved February 4, 1887, was passed under the authority conferred upon Congress by the Federal Constitution "to regulate commerce with foreign nations, among the several States, and with the Indian tribes," and in recognition of a duty which, though long delayed, had at length, in the opinion of Congress, become imperative. The reasons for the delay are well understood. When the grant of this power of regulation was made by the Constitution the commerce² between the States which might be controlled under it was quite insignificant both in volume and value. It was for the most part carried on by means of coastwise vessels and by water craft of various kinds which were sailed or otherwise propelled on the lakes, rivers, and smaller streams of the interior. On the land there was very little that could be said to rise to the

¹ Act to Regulate Commerce, approved February 4, 1887, and took effect April 5, 1887, C. 104, 24 Stat. at Large, 379. This act was known as the Cullom Act and was modeled after the following English Acts: The Railway and Canal Traffic Act, 1854 (17 and 18 Vict. C. 31), and the Regulation of Railways Act, 1873 (36 and 37 Vict. C. 48). See *Interstate Com. Com. v. Baltimore &c. R. Co.*, 145 U. S. 263, 36 L. ed. 699, 12 Sup. Ct. 844.

² Commerce is an exchange of goods. The word also includes the subject, vehicle, agent and various operations by which such exchange is effectuated. *Riverside Mills v. A. C. L. R. Co.* (1907), 168 Fed. Rep. 987.

dignity of interstate commerce, and the regulation of that little, as also that which was exclusively State traffic, was for the most part left to the rules of the common law. The exceptional regulations, if any seemed to be called for, were made by the State laws. In a few cases where persons had associated themselves together as regular carriers of persons on definite routes, exclusive rights were granted to them by the States as such carriers, the motive to such grants being a belief on the part of the State authorities that without the exclusive privilege, the regular transportation would not be adequately and reliably provided for.

“For the regulation of commerce on the ocean and other navigable waters, Congress very promptly passed the necessary laws; but its jurisdiction within the States was not very clearly understood, and it was not until the great case of *Gibbons v. Ogden*,³ decided in 1824, that it was authori-

³ *Gibbons v. Ogden*, (1824), 9 Wheat. (U. S.) 1, 6 L. ed. 23. The power to regulate commerce, as laid down in this case, is considered and approved in *Brown v. State of Maryland* (1827), 12 Wheat. (U. S.) 419, 446, 452, 6 L. ed. 23, and in *Passenger Cases*, *Smith v. Turner* (1849), 7 How. (U. S.) 283, 394, 400, 405, 433, 437, 462, 12 L. ed. 702. In *United States v. Coombs*, 12 Pet. (U. S.) 72, 78, 9 L. ed. 1004, the Court says, per Story, J.: “The power to regulate commerce includes the power to regulate navigation as connected with foreign nations and among the States. It was so held and decided by this court, in the case of *Gibbons v. Ogden*, 9 Wheat. (1824), (U. S.) 189 to 198, 6 L. ed. 68, reversing 17 Johns (N. Y.) 488. It does not stop at the mere boundary line of a State, nor is it confined to acts done on the water or in the necessary course of navigation thereof. It extends to such acts done on land which interfere with, obstruct or prevent the due exercise of the power to regulate commerce and navigation with foreign States and among the States.”

This case is also discussed and commented on in regard to the constitutionality of State license laws, in the *License Cases*, 5 How. (U. S.) 504, 581-584, 588, 600-603, 12 L. ed. 256.

As to the power of Congress to regulate “commerce among the several States,” see as to navigable rivers, obstructions, bridges over same, etc., *Sinnot v. Davenport*, 22 How. (U. S.) 227, 16 L. ed. 243; *Haldeman v. Beckwith*, 4 McLean, (U. S.) 286; *Devoe v. Bridge Co.*, 3 Am. Law Reg. 79; *Jolly v. Terre Haute Co.*, 6 McLean, (U. S.) 237; *Columbus Ins. Co. v. Peoria Bridge Co.*, 6 McLean, (U. S.) 70; *Willson v. Black Bird C. M. Co.*, 2 Pet. (U. S.) 245, 7 L. ed. 412; *Pennsylv-*

tatively and finally determined that the waters of a State, when they constituted a highway for foreign and interstate commerce, are, so far as concerns such commerce, as much within the reach of Federal legislation as are the high seas; and consequently that exclusive rights for their navigation cannot be granted by the States whose limits embrace them.

"But while providing from time to time for the regulation of commerce by water, Congress still abstained from the regulation of commerce by land. The reasons for this continued to be the same as at the first. The land commerce was insignificant in amount, and the rules of the common law were in general found adequate to the settlement of the questions arising out of it. The commerce of trappers and hunters, of traders with the Indians, or that of the early settlers in the wilderness, needed only the most primitive modes of conveyance; the emigrant wagon in one direction and the packhorse and canoe in the other, performed in respect to it the functions now performed by the railroad train and the steamboat. The use of such primitive instrumentalities required little regulation by either State or national law. When Congress provided for the construction of the Cumberland Road as a great national highway, it was thought quite undesirable to regulate its use by national law or to take national supervision of the commerce upon it; and, with the commerce on the ordinary highways, it was left to the supervision and care of the States respectively through or into which the roads should be built.

vanian v. Wheeling &c. Bridge Co., 13 How. (U. S.) 518, 14 L. ed. 249; Gilman v. Philadelphia, 3 Wall. (U. S.) 713, 18 L. ed. 96; Veazie v. Moore, 14 How. (U. S.) 568, 14 L. ed. 545; Withers v. Buckley, 20 How. (U. S.) 84, 15 L. ed. 816; U. S. v. The James Morrison, 1 Newb. 241; United States v. William Pope, 1 Newb. 256; United States v. Railroad Bridge Co., 3 McLean, (U. S.) 517; Woodburn v. Kilburn Co., 1 Abb. U. S. 158; Woodman v. Kilburn Man. Co., 1 Bill. 546; The Vancouver, 18 Int. Rev. Rec. 103; s. c. 2 Sawy. (U. S.) 381; Mason v. Rhinelander, 8 Ben. (U. S.) 163; U. S. v. Coombs, 12 Pet. (U. S.) 72, 9 L. ed. 1004; Heiman v. Beefman Co., 1 Fed. Rep. 145; U. S. v. Morrison, 4 N. Y. Leg. Obs. 333; U. S. v. Jackson, 4 N. Y. Leg. Obs. 450.



“With the application of steam as a motive power for propelling vessels, the conditions were immediately, to a considerable extent, changed. An impetus was given to the internal commerce of the country which promised immense results, and which made immediate and imperative demand for other and different highways to those which accommodated the packhorse and heavy wagons of the early traders and settlers. But even then the circumstances were favorable to a prolongation of State control. The first improved highways were turnpikes; the next in grade were canals; but the highways by water as well as the highways by land were provided for by the States. The General Government made some appropriations for canals where they were needed as improvements, in existing navigation, but the great artificial channels of water transportation were State creations. Such was the case with the Erie Canal, which during the period when emigration to the wilderness was greatest, and when improvement in the new Territories was most rapid, constituted the most important of all the highways connecting the interior with the seaboard. Such also were the canals which were constructed to connect the Delaware with the Hudson, the Chesapeake with the Ohio, the waters of Lake Erie with the Ohio at Portsmouth, at Cincinnati, and at Evansville, the waters of Lake Michigan with the Mississippi, and many others now almost forgotten, but which were of great temporary importance and value.

“As the States constructed these great interstate highways, it was not unnatural that they should be left in charge of the regulation of trade upon them, especially as no complaint was made that their regulations were unjust, or that they discriminated unfairly as against the citizens or the business of other States. When, in 1830, steam power began to be applied to the propulsion of vehicles upon land, the same reasons as regards control continued to prevail. The roads constructed for such vehicles were authorized by and built under the authority of the States; the corporate charters under which they were operated, and which prescribed the rights, privileges, and powers of the asso-

ciated owners were State laws; the States determined for them the measure of their taxation, and limited if it seemed politic their charges and their profits. The States thus touched them so nearly in all their interests and all their functions that Federal intervention seemed not only unnecessary but intrusive unless State power should be abused; and the abuse not often appearing, intervention was scarcely thought of by any one.

“For a long time, therefore, the power of the Federal Government in the regulation of commerce between the States was put forth by way of negation rather than affirmatively; that is to say, it was put forth in restraint of excessive State power when it appeared, instead of by way of affirmative national regulation. The national restraint, when there was any, was commonly effected by invoking the action of the judicial department of the Government, and by its assistance arresting such State action as appeared to constitute an unauthorized interference with interstate traffic and intercourse. This special intervention, whether in the exercise of an original jurisdiction, as in the *Wheeling Bridge Case*,⁴ or under an appellate authority, as in *Ward v. Maryland*,⁵ and *Welton v. Missouri*,⁶ has been important and useful in a considerable number of cases, but in the nature of things it could not accomplish the purposes of general regulation. On the other hand, the effect was to leave the corporations, into whose hands the internal commerce of the country had principally fallen, to make the law for themselves in many important particulars—the State power being inadequate to complete regulation, and the national power not being put forth for the purpose.

“The common law still remained inoperative, but there were many reasons why it was inadequate for the purposes of complete regulation. One very obvious reason was that

⁴ *Wheeling Bridge Case*, 13 How. (U. S.) 518, 14 L. ed. 249.

⁵ *Ward v. Maryland* (1870), 12 Wall. (U. S.) 418, 20 L. ed. 449.

⁶ *Welton v. State of Missouri*, 91 U. S. 275, 23 L. ed. 347.

the new method of land transportation was wholly unknown to the common law, and was so different from those under which common law rules had grown up, that doubts and differences of opinion as to the extent to which those rules could be made applicable were inevitable. A highway of which the ownership is in private citizens or corporations who permit no other vehicles but their own to run upon it bears obviously but faint resemblance to the common highway upon which every man may walk or ride or drive his wagon or carriage. If we undertake to apply to the one the rules which have grown up in relation to the other, there must necessarily be a considerable period in which the State law will, in many important particulars, be uncertain, and while that continues to be the case, those who have the power to act and must necessarily act by rule and according to some established system, will for all practical purposes make the law, because the rule and the system will be of their establishment.

“Such, to a considerable extent was the fact regarding the business of transporting persons and property by rail.

“Those who controlled the railroads not only made rules for the government of their own corporate affairs, but very largely also they determined at pleasure what should be the terms of their contract relations with others, and others have acquiesced, though oftentimes unwillingly, because they could not with confidence affirm that the law would not compel it, and a test of the question would be difficult and expensive. The carriers of the country were thus enabled to determine in great measure what rules should govern the transportation of persons and property; rules which intimately concerned the commercial, industrial, and social life of the people.

“The circumstances of railroad development tended to make this indirect and abnormal lawmaking exceedingly unequal and oftentimes oppressive. When railroads began to be built the demand for participation in their benefits went up from every city and hamlet in the land, and the public was impatient of any obstacles to their free construction

and of any doubts that might be suggested as to the substantial benefits to flow from any possible line that might be built. Under an imperative popular demand general laws were enacted in many States which enabled projectors of roads to organize at pleasure and select their own lines, and where there were no such laws the grant of a special charter was almost a matter of course, and the securities against abuse of corporate powers were little more than nominal. For a long time the promoter of a railway was looked upon as a public benefactor, and laws were passed under which municipal bodies were allowed to give public money or loan public credit in aid of his schemes on an assumption that almost any road would prove reasonably remunerative, but that in any event the indirect advantages which the public would reap must more than compensate for the expenditures.

“In time it came to be perceived that these sanguine expectations were delusive. A very large proportion of the public money invested in railroads was wholly sunk and lost. Many roads were undertaken by parties who were without capital, and who relied upon obtaining it by a sale of bonds to a credulous public. The corporation thus without capital was bankrupt from its inception, and the corporators were very likely to be mere adventurers who would employ their charter powers in such manner as would most conduce to their personal ends.

“It is striking proof of the recklessness of corporate management that at the close of the year 1887, there were one hundred and eight roads, representing a mileage of 11,066, in the hands of receivers, managing them under the direction of the courts, whose attention was thus necessarily withdrawn from the ordinary and more appropriate duties of judicial bodies. So serious had been the evil of bringing worthless schemes into existence and making them the basis for an appropriation of public moneys or for the issue of worthless evidences of debt that a number of the States so amended their constitutions as to take from the legislature the power either to lend the credit of the State in aid of

corporations proposing to construct railroads, or to authorize municipal bodies to render aid, either in money or credit. State legislation had at the same time been in the direction of making compulsory the actual payment of a bona fide capital before a corporation should be at liberty to test the credulity of the public by an issue of negotiable securities.

“When roads were built for which the business was inadequate, the managers were likely to seek support by entering upon competition for business which more legitimately belonged to the other roads, and which could only be obtained by offering rates so low that if long continued they must prove destructive. A competitive warfare was thus opened up in which each party endeavored to underbid the other, with little regard to prudential considerations, and freights were in a great many cases carried at a loss, in the hope that in time the power of the rival to continue the strife would be crippled and the field practically left to a victor, which could then make its own terms with customers. When the competition was less extreme than this, there was still a great deal of earnest strife for business, some of which was open and with equal offerings of rates and accommodations to all, but very much of which was carried on secretly, and then the very large dealers practically made their own terms, being not only accommodated with sidetracks and other special conveniences, but also given what were sometimes spoken of as wholesale rates, or perhaps secret rebates, which reduced the cost to them of transportation very greatly below what smaller dealers in the same line of business were compelled to pay. Such allowances were sufficient of themselves in very many cases to render successful competition, as against those who had them, practically impossible.

“The system of making special arrangements with shippers was in many parts of the country not confined to large manufacturers and dealers, but was extended from person to person under the pressure of alleged business necessity, or because of personal inopportunity or favoritism, and even

in some cases from a desire to relieve individuals from the consequences of previous unfair concessions to rivals in business. The result was that shipments of importance were commonly made under special bargains entered into for the occasion, or to stand until revoked, of which the shipper and representative of the road were the only parties having knowledge. These arrangements took the form of special rates, rebates, and drawbacks, underbilling, reduced classification, or whatever might be adapted to keep the transaction from the public; but the public very well understood that private arrangements were to be had if the proper motives were presented. The memorandum book carried in the pocket of the general freight agent often contained the only record of the rates made to the different patrons of the road, and it was in his power to place a man or a community under an immense obligation by conceding a special rate on one day, and to nullify the effect of it the next day by doing even better by a competitor.

“The system, if it can be called such, involved a great measure of secrecy, and its necessary conditions were such as to prevent effective efforts to break it down, though the willingness to make the effort was not wanting among intelligent shippers. It was of the last importance to the shipper that he be on good terms with those who made the rates he must pay; to contend against them was sometimes regarded as a species of presumption which was best dealt with by increasing burdens; and the shipper was cautious about incurring the risk. Nevertheless it was a common observation, even among those who might hope for special favors, that a system of rates, open to all and fair as between localities, would be far preferable to a system of special contracts, into which so large a personal element entered or was commonly supposed to enter. Permanence of rates was also seen to be of very high importance to every man engaged in business enterprises, since without it business contracts were lottery ventures. It was also perceived that the absolute sum of money charges exacted for transportation, if not clearly beyond the bounds

of reason, was of inferior importance in comparison with the obtaining of rates that should be open, equal, relatively just as between places, and as steady as in the nature of things was practicable.

“Special favors of rebates to large shippers were not always given because of any profit which was anticipated from the business obtained by allowing them; there were other reasons to influence their allowance. It was early perceived that shares in railroad corporations were an enticing subject for speculation, and that the ease with which the hopes and expectations of buyers and holders could be operated upon pointed out a possible road to speedy wealth for those who should have the management of the roads. For speculative purposes an increase in the volume of business might be as useful as an increase in net returns; for it might easily be made to look to those who knew nothing of its cause like the beginning of great and increasing prosperity to the road. But a temporary increase was sometimes worked up for still other reasons, such as to render plausible some demand for an extension of line, or for some other great expenditure, or to assist in making terms in a consolidation, or to strengthen the demand for a larger share in a pool.

“Whatever was the motive, the allowance of the special rate or rebate was essentially unjust and corrupting; it wronged the smaller dealer, oftentimes to an extent that was ruinous, and it was generally accompanied by an allowance of free personal transportation to the large dealer, which had the effect to emphasize its evils. There was not the least doubt that had the cause been properly brought to a judicial test these transactions would in many cases have been held to be illegal at the common law; but the proof was in general difficult, the remedy doubtful or obscure, and the very resort to a remedy against the party which fixed the rates of transportation at pleasure, as has already been explained, might prove more injurious than the rebate itself. Parties affected by it, therefore, instead of seeking redress in the courts, were more likely to direct their efforts to the securing of similar favors on their own

behalf. They acquiesced in the supposition that there must or would be a privileged class in respect to rates, and they endeavored to secure for themselves a place in it.

"Personal discrimination in rates was sometimes made under the plausible pretense of encouraging manufactures or other industries. It was perhaps made a bargain in the establishment of some new business or in its removal from one place to another that its proprietors should have rates more favorable than were given to the public at large; and this, though really a public wrong, because tending to destroy existing industries in proportion as it unfairly built up others, was generally defended by the parties to it on the ground of public benefit.

"Local discriminations, though not at first blush so unjust and offensive, had nevertheless been exceedingly mischievous, and if some towns grew others withered away under their influence. In some sections of the country if rates were maintained as they were at the time the interstate commerce law took effect, it would have been practically impossible for a new town, however great its natural advantages, to acquire the prosperity and the strength which would make it a rival of the towns which were specially favored in rates; for the rates themselves would establish for it indefinitely a condition of subordination and dependence to "trade centers." The tendency of railroad competition had been to push the rates down and still further down at these trade centers, while the depression at intermediate points had been rather upon business than upon rates. In very many cases it resulted in charging more for a short than for a long haul on the same line in the same direction; and although this was justified by railroad managers as resulting from the necessities of the situation, it is not to be denied that the necessity in many cases was artificially created and without sufficient reason.

"The inevitable result was that this management of the business had a direct and very decided tendency to strengthen unjustly the strong among the customers and depress the weak. These were very great evils, and the indirect con-

sequences were even greater and more pernicious than the direct, for they tended to fix in the public mind a belief that injustice and inequality in the employment of public agencies were not condemned by the law, and that success in business was to be sought for in favoritism rather than in legitimate competition and enterprise.

“The evils of free transportation of persons were not less conspicuous than those which have been mentioned. This, where it extended beyond the persons engaged in railroad service, was commonly favoritism in a most unjust and offensive form. Free transportation was given not only to secure business, but to conciliate the favor of localities and of public bodies; and, while it was often demanded by persons who had, or claimed to have, influence which was capable of being made use of to the prejudice of the railroads, it was often accepted by public officers of all grades and varieties of service. In these last cases the pass system was particularly obnoxious and baneful; for if any return was to be made or was expected of public officers, it was of something which was not theirs to give, but which belonged to the public or their constituents. A ticket entitling one to free passage by rail was often more effective in enlisting the assistance and support of the holder than its value in money would have been, and in a great many cases it would be received and availed of when the offer of money, made to accomplish the same end, would have been spurned as a bribe. Much suspicion of public men resulted, which was sometimes just, but also sometimes unjust and cruel; and some deterioration of the moral sense of the community, traceable to this cause, was unavoidable while the abuse continued. The parties most frequently and most largely favored were those possessing large means and having large business interests.

“The general fact came to be that in proportion to the distance they were carried those able to pay the most paid the least. One without means had seldom any ground on which to demand free transportation, while with wealth he was likely to have many grounds on which he could make

it for the interest of the railroad company to favor him, and he was sometimes favored with free transportation not only for himself and his family but for business agents also, and even sometimes for his customers. The demand for free transportation was often in the nature of blackmail, and was yielded to unwillingly and through fear of damaging consequences from a refusal. But the evils were present as much when it was extorted as when it was freely given.

“These were some of the evils that made interference by national legislation imperative. But there were others that were of no small importance. Rates when there was no competition were sometimes so high as to be oppressive, and when competition existed by lines upon which the public confidently relied to protect them against such a wrong, a consolidation was effected and the high rates perpetuated by that means. In some cases the roads, created as conveniences in transportation, were so managed in respect to business passing or destined to pass over other roads that they constituted hindrances instead of helps, to the great annoyance of travel and to the serious loss of those who intrusted their property to them. Then their rates were changed at pleasure and without public notification; their dealings to a large extent were kept from the public eye, the obligation of publicity not being recognized; and the public were therefore without the means of judging whether their charges for railroad service were reasonable and just or the contrary.

“But the publications actually made only increased the difficulties. Railroad rates, difficult enough to be understood by the uninitiated when printed plainly in one general tariff with classification annexed, became mystic enigmas when several different tariffs were printed, as was the case in some sections; some relating to competitive points and others to what were called local points, and each referring to voluminous and perhaps different classifications, which were printed but not posted, and which were observed or disregarded at will in the rates as published. Such unsys-

tematic and misleading publications naturally led to many overcharges and controversies, and naturally invited and favored special rates and injurious preferences.

“These were serious evils; and they not only to some extent blunted the sense of right and wrong among the people and tended to fix an impression upon the public mind that unfair advantages in the competition of business were perfectly admissible when not criminal, but they built up or strengthened a class feeling and imbittered the relations between those who for every reason of interest ought to be in harmony. It was high time that adequate power should be put forth to bring them to an end. Railroads are a public agency. The authority to construct them with extraordinary privileges in management and operation is an expression of sovereign power, only given from a consideration of great public benefits which might be expected to result therefrom. From every grant of such a privilege resulted a duty of protection and regulation, that the grant might not be abused and the public defrauded of the anticipated benefits.

“The abuses of corporate authority to the injury of the public were not the only reasons operating upon the public mind to bring about the legislation now under consideration; some other things which in their direct effects were wrong to stockholders had their influence also, and this by no means a light one. The manner in which corporate stocks were manipulated for the benefit of managers and to the destruction of the interests of the owners was often a great scandal, resulting sometimes in bankruptcy and practical destruction of roads which, if properly managed, would have been not only profitable, but widely useful. This in its direct results might be a wrong to individuals only, but in its indirect influence it was a great public wrong also.

“The most striking and obvious fact in such a case commonly was that persons having control of railroads in a very short time by means of the control amassed great fortunes. The natural conclusion which one draws who

must judge from surface appearances, is that these fortunes were unfairly acquired at the expense of the public; that they represented excessive charges on railroad business, or unfair employment of inside privileges, and furnished in themselves conclusive evidence that rates were wrong and probably extortionate. An impression of this sort, when it happens to be wide of the fact, is for many reasons unfortunate. It creates or strengthens a prejudice against all railroad management—the honest as well as the dishonest—which affects the public view of all railroad questions; it renders it more difficult to deal with such questions calmly and dispassionately; it makes the public restive under the charges they are subjected to, even though they be moderate and necessary; it tends to strengthen a feeling among the unthinking that capital represents extortion. However careful, considerate, fair, and just the management of any particular road may be, and however closely it may confine itself to its legitimate business, it is impossible that it should wholly escape the ill effects of this prejudice, which are visited upon all roads because some conspicuous railroad managers have by their misconduct given in the public mind a character to all.

“Evils of the class last mentioned were difficult of legislative correction, because they sprang from the overconfidence of stockholders in the officers chosen to manage their interests, and whose acts at the time they perhaps assented to. But if capable of correction by legislative authority, it was in general that of the States, not that of the Nation. The States in the main conferred the corporate power, and it was for the States by their legislation to provide for the protection of the individual interests which were brought into existence by their permission. The National Government had to do with the commerce which these artificial entities of State creation might be concerned in. Nevertheless, the manifest misuse of corporate powers strengthened the demand for national legislation, and this very naturally because the private gains resulting from corporate abuse were supposed to spring, to some extent at least,

from excessive burdens imposed upon the commerce which the nation ought to regulate and protect.”⁷

“It is true that the immense inland development of the common carrier business in America after the Civil War, with the extensions of railroad facilities into the more remote regions of interior settlement, led several of the States to establish a local railroad board of commissioners for gathering statistics of the business, compelling railway returns, hearing private complaints, investigating the cause of accidents, supervising freight and passenger tariffs under legislative direction, and exercising on behalf of the public generally a considerable control over those powerful corporations so as to prevent recklessness and abuse. Some State legislatures inclined moreover to fix the maximum rates which inland common carriers might charge their customers. But when the Supreme Court of the United States decided in the case of *Wabash, St. Louis & Pacific R. Co. v. State of Illinois*,⁸ that all State regulation must be confined to a carrier business strictly local, that it began and ended with the limits of the particular State, and could not extend to a continuous transportation which railway companies conducted beyond such boundaries to some other State, Territory or foreign country, without infringing upon the constitutional sovereignty of the United States over all interstate and foreign commerce, Congress promptly intervened with a statute of corresponding tenor to apply the same general policy of supervision by commissioners wherever national jurisdiction extended.”⁹

In general, a policy which States still widely maintain

⁷ First Annual Report of the Interstate Commerce Commission.

⁸ *Wabash, St. Louis & Pacific R. Co. v. State of Illinois* (1886), 118 U. S. 557, 30 L. ed. 244; 7 Sup. Ct. 4. Previous to this decision Congress had passed several statutes regulating certain subjects of interstate commerce, as follows: Act March 3, 1873 (now Sections 4386-4390 R. S.), relating to transportation of livestock; Act June 15, 1866 (now Section 5258 R. S.), permitting carriers by rail to form continuous lines. Act May 29, 1884, prohibiting, by railroad, interstate transportation affected with contagious disease.

⁹ Schouler's *Bailments and Carriers*.

for local transportation by rail, Congress established for all interstate and foreign traffic of the same description.

Different theories have been entertained as to the control and regulation by governments of the means of transportation.

One theory is that the government itself shall own, control, and operate the transportation facilities, which, as applied to our country, would involve government ownership and operation, either by the General Government or by the State governments or by the two together or separately.

Another theory is that the facilities of transportation shall be left wholly to development by private parties for gain, and that the private owners of such transportation facilities shall be permitted to exercise control over their own operations, leaving to the natural force of competition such regulation as may be required.

Another theory is that the government, having granted to private persons or corporations certain rights, such as the right of eminent domain, shall commit the construction, control, ownership, and operation of railroads and other facilities of transportation to private owners, with the power exercised on the part of the government to regulate the methods used by the owners and operators of such transportation facilities, including the right to regulate the charges to be made and the facilities afforded. The latter is the theory adopted by most, if not all, of our State governments and adopted by the General Government through the passage in 1887, of the law known as "The Act to Regulate Commerce."

For a copy of the original Act, as well as all other Acts supplementary thereto and amendatory thereof, see Appendices.

CHAPTER II.

GENESIS, ORGANIZATION AND INTERNAL ARRANGEMENT OF THE INTERSTATE COMMERCE COMMISSION.

SECTION

1. Power of Congress to Establish the Interstate Commerce Commission.
2. Genesis of the Commission.
3. Members of the Commission.
4. Chairman of the Commission.
5. Secretary of the Commission.
6. Employés of the Commission.
7. Offices of the Commission.
8. Address of the Commission.
9. Supplies of the Commission.
10. Expenses of the Commission.
11. Sessions of the Commission. {

General.

Special.
12. Special Counsel.
13. Special Agents or Examiners.
14. Departments of the Commission and Distribution of its Duties.
15. Procedure and Practice before the Commission.
16. Administrative Rulings, General Orders, Opinions and Tariff Regulations of the Commission.
17. Reports of Investigations, Decisions, Orders and Requirements of the Commission.
18. Correspondence with the Commission by Carriers on Freight and Passenger Matters.
19. Library of the Commission.
20. Annual Reports of the Commission to Congress.
21. Publications of the Commission.
22. Distribution of Official Circulars and Rulings of the Commission.
23. Quotations from Correspondence of the Commission.
24. Powers and Duties of the Commission.

§ 1. Power of Congress to Establish the Interstate Commerce Commission.

Congress has plenary power, subject to the limitations imposed by the Constitution, to prescribe the rules by which commerce among the several States is to be governed. It may, in its discretion, employ any appropriate means, not forbidden by the Constitution, to carry into effect, and accomplish, a power given to it by the Constitution.¹

The Legislature may delegate to an administrative body the execution in detail of the legislative power of regulation, and has done so in establishing the Interstate Commerce Commission.²

§ 2. Genesis of the Commission.

The Interstate Commerce Commission was created and established under authority of the "Act to Regulate Commerce" approved February 4, 1887.³

The first Commission was organized March 31, 1887, by the appointment of President Grover Cleveland and confirmation by the Senate and entered at once upon the discharge of its duties. The other provisions of the Act took effect April 5, 1887.

§ 3. Members of Commission.

¶ A. NUMBER.

The Interstate Commerce Commission is composed at the present time of seven Commissioners.⁴ The Commission originally consisted of five Commissioners,⁵ but the amend-

¹ I. C. C. v. Brimson, 154 U. S. 447; 38 L. ed. 1047; 14 Sup. Ct. Rep. 1125.

² I. C. C. v. C., N. O. & T. P. Ry. Co., 167 U. S. 479; 17 Sup. Ct. Rep. 896; 46 L. ed. 243.

³ Act to Regulate Commerce approved Feb. 4, 1887, 24 Statutes at Large, 379, Section 11.

⁴ Act, Section 24.

⁵ Act, Section 11.

ment of June 29, 1906, increased the number to seven members.⁶

¶ B. QUALIFICATIONS.

No person in the employment of or holding an official relation to any common carrier subject to the provisions of the Act to Regulate Commerce, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, is qualified to enter upon the duties of or hold the office of Commissioner.⁷ Neither may the Commissioners engage in any other business, vocation, or employment during their term of office. Not more than four Commissioners may be appointed from the same political party.⁸

¶ C. HOW APPOINTED.

The Commissioners are appointed by the President of the United States, by and with the advice and consent of the Senate.⁹

¶ D. TERM OF OFFICE.

The Commissioners are each appointed for a term of seven years, except that any person appointed to fill a vacancy is appointed only for the unexpired term of the Commissioner whom he succeeds.¹⁰ Their term of office under the original Act was six years,¹¹ but this was changed by the amendment of June 29, 1906.¹²

¶ E. THEIR DUTIES.

The Commissioners exercise a general control and direction over all the business of the Commission. They personally examine all complaints received, hear the trial of

⁶ Act, Section 24.

⁷ Act, Section 11.

⁸ Act, Section 24.

⁹ Act, Sections 11 and 24.

¹⁰ Act, Section 24.

¹¹ Act, Section 11.

¹² Act, Section 24.

all controversies, conduct investigations, prepare all reports made, decisions rendered, and orders and circulars issued, allow subpoenas *duces tecum*, carry on the correspondence relating to the action and duties of carriers and the rights of shippers, and various other things.¹³

While the Commission exercises general control and direction over the official work of all divisions, they are in more immediate touch with the work of the Operating Division.¹⁴

¶ F. SALARIES.

The compensation of each Commissioner is ten thousand dollars per annum, payable in the same manner as the Judges of the Courts of the United States.¹⁵ The salaries of the Commissioners as provided by the original Act were seven thousand five hundred dollars per annum,¹⁶ but the amendment of June 29, 1906, increased their compensation.

¶ G. VACANCIES.

Any person appointed to fill a vacancy is appointed only for the unexpired term of the Commissioner whom he succeeds.¹⁷ No vacancy in the Commission impairs the right of the remaining Commissioners to exercise all the powers of the Commission.¹⁸ Vacancies in the Commission have been filled from time to time in accordance with the limitation in the Act that not more than four members shall be of the same political party.

¶ H. REMOVAL FROM OFFICE.

Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office.¹⁹

¹³ Third Annual Report of I. C. C. (1889).

¹⁴ Eighteenth Annual Report of I. C. C. (1904).

¹⁵ Act, Section 24.

¹⁶ Act, Section 18.

¹⁷ Act, Section 11.

¹⁸ Act, Section 24.

¹⁹ Ibid.

¶ I. ORIGINAL MEMBERS.

The Commission was organized in 1887 by the appointment by President Cleveland and confirmation by the Senate, of the following members: Hon. Thomas M. Cooley, of Michigan; Hon. William R. Morrison, of Illinois; Hon. Walter L. Bragg, of Alabama; Hon. Aldace F. Walker, of Vermont; Hon. Augustus Schoonmaker, of New York.

¶ J. PRESENT MEMBERS.

The Commission at this writing is composed of the following members: Hon. Martin A. Knapp, of New York; Hon. Judson C. Clements, of Georgia; Hon. Charles A. Prouty, of Vermont; Hon. Francis M. Cockrell, of Missouri; Hon. Franklin K. Lane, of California; Hon. Edgar E. Clark, of Iowa; Hon. James S. Harlan, of Illinois.

§ 4. Chairman of the Commission.

The Chairman of the Interstate Commerce Commission is elected by the Commissioners from among its members. The first Chairman of the Commission was Honorable Thomas M. Cooley, one of the ablest jurists of the country, Chief Justice of the Supreme Court of the State of Michigan; author of "Constitutional Limitations" and other works of highest authority. Judge Cooley resigned September 4, 1891. He was succeeded by Mr. William R. Morrison, who was then the member of the Commission from Illinois, and who served as Chairman until December 31, 1897. Mr. Morrison was succeeded by Hon. Martin A. Knapp as Chairman, who still serves in that capacity.

§ 5. Secretary of the Commission.

The Commission is authorized by the Act to appoint a Secretary at an annual salary of \$3,500, payable in the same manner as the Judges of the Courts of the United States.²⁰

²⁰ Act, Section 18.

However, this salary was increased to \$5,000 by Sundry Civil Act of March 4, 1907.²¹

By the provisions of the Act it is the duty of the Secretary to preserve, as public records, all copies of schedules and classifications, and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers filed with the Commission, as well as the statistics, tables, and figures contained in the annual reports of carriers made to the Commission.²² He furnishes certified copies of or extracts from any of the schedules, tariffs, contracts, agreements, arrangements, or reports filed with the Commission for the purpose of investigation by the Commission and to be used as evidence in judicial proceedings.²³ The Secretary acts as the executive officer and is also the disbursing agent of the Commission, and is under bond.²⁴ His duties in addition to those enumerated in the Act are varied, and relate to the Commission's records, mails, correspondence, services of papers, publications, distribution of documents, supplies of all kinds, payment of all employees, disbursement of all moneys, and whatever else may be found necessary.²⁵

Mr. Edward A. Moseley was the first Secretary of the Commission and holds that office at this writing.

§ 6. Employés of the Commission.

The Commission is authorized to employ and fix the compensation of such employés, other than the Secretary, as it may find necessary to the proper performance of its duties.²⁶ These employés are all appointed by the Commission under the Civil Service Rules, and consists of law clerks, confidential clerks, statisticians, accountants, exam-

²¹ 34 Statutes at Large, 1311.

²² Act, Section 16.

²³ Ibid.

²⁴ Third Annual Report of I. C. C. (1889).

²⁵ Ibid.

²⁶ Act, Section 18.

iners, agents, inspectors, tariff clerks, rate clerks, etc. The report of the Commission for the year 1909 showed nearly 500 employes in all.

§ 7. Offices of the Commission.

The Commission is authorized by the Act to hire suitable offices for its use.²⁷ The principal office of the Commission is at the City of Washington, District of Columbia.²⁸ Its offices at the present time are located in the American National Bank Building, No. 1317 F Street, N. W., where its general sessions for hearing contested cases, including oral argument, are held.²⁹

§ 8. Address of the Commission.

All complaints concerning anything done or omitted to be done by any common carrier, and all petitions or answers in any proceeding, or applications in relation thereto, and all letters and telegrams for the Commission, must be addressed to Washington, D. C., unless otherwise specifically directed.³⁰

Tariffs, classifications and other matter sent by common carriers for filing must be addressed to "Auditor," Interstate Commerce Commission, Washington, D. C.³¹

§ 9. Supplies of the Commission.

The Commission is authorized by the Act to procure all necessary supplies.³² By the courtesy of the Department of the Interior, the Commission buys its supplies through that Department and receives the advantage of the reduced prices obtained by it in the making of large purchases. A few articles needed for the use of the Commission which

²⁷ Act, Section 18.

²⁸ Act, Section 19.

²⁹ Rule 1, Rules of Practice before the I. C. C.

³⁰ Rule 21, Rules of Practice before the I. C. C.

³¹ Rule 41, Commission's Tariff Circular 15-A.

³² Act, Section 18.

are not contracted for by the Department of the Interior, are purchased after bids are received.³³

§ 10. Expenses of Commission.

All the expenses of the Commission, including all necessary expenses for transportation incurred by the Commission, or by its employes under their orders, in making any investigation, or upon official business in any other places than in the City of Washington, are allowed and paid on presentation of itemized vouchers therefor, approved by the Chairman of the Commission.³⁴ The Secretary of the Interstate Commerce Commission is entitled to be reimbursed for telegrams sent by him in pursuance of directions of the Commission and approved by the Chairman of the Commission; substantial compliance with the requirements of the Comptroller of the Treasury that the original telegrams relating to the business of the Interstate Commerce Commission, or copies thereof, or certificates that such telegrams are of a confidential nature, shall accompany telegraph vouchers for which credit is asked, being made when the Secretary of the Commission files with his accounts an order of the Commission, which directs him to disregard such requirements as to copies of telegrams, and which declares that such messages are so far confidential as to justify the refusal to disclose their contents. The requirements for their production being unreasonable and against public interest.³⁵

§ 11. Sessions of the Commission

{General.
Special.

¶ A. GENERAL SESSIONS.

The general sessions of the Commission for the hearing of complaints, and for investigations of a general charac-

³³ Eighteenth Annual Report of I. C. C. (1904).

³⁴ Act, Section 18.

³⁵ United States v. Moseley, 187 U. S. 322; 47 L. ed. 198, 23 Sup. Ct. 90, affirming the judgment of the Court of Claims.

ter, relating to the business of common carriers and the manner and method in which the same is conducted, are usually held pursuant to the Act,³⁶ at the City of Washington, D. C. This has been found more conducive to the convenience of attendance from different parts of the country.³⁷

¶ B. SPECIAL SESSIONS.

The Act provides that whenever the convenience of the public or the parties may be promoted, or delay or expense prevented thereby, the Commission may hold sessions in any part of the United States. Or it may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of the Act.³⁸

§ 12. Special Counsel.

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for and represent the Commission in any case pending in the Commerce Court; and the expenses of such employment shall be paid out of the appropriation for the Commission.³⁹

This authority was conferred upon the Commission by the Hepburn amendment of 1906. However, prior to the amendment referred to the Commission had in a number of instances assigned its own counsel to appear for the complainant in cases where formal complaint had been made by private shippers or public associations, such attorneys acting either along or in connection with counsel furnished by the complainant.

³⁶ Act, Section 19.

³⁷ Third Annual Report of I. C. C. (1889).

³⁸ Act, Section 19.

³⁹ Act, Section 16, (as amended June 18, 1910).

In justifying this practice, the Commission in its annual report to Congress of 1903, stated:⁴⁰

"The Act to Regulate Commerce was enacted for the purpose of correcting unreasonable rates and discriminating practices in the interstate transportation of freight and passengers by rail. In the very nature of things the wrongs aimed at are of trifling consequence to the individual, while of tremendous importance to the public as a whole. If a rate be extortionate the amount paid by a single shipper is usually small, but the total may amount to millions of dollars annually. Perhaps in most instances the freight rate is so small a part of the total cost of a commodity that the consumer is unconscious of the increase in rate. The middleman who pays the freight is not immediately interested in the absolute amount of that rate, provided he enjoys as favorable terms as his competitors. It results, therefore, that no one individual can ordinarily afford to sustain the burden of litigating the reasonableness of a freight rate; and this is equally true, in most instances, of discrimination between commodities or localities. To create merely a right of action in such instances and establish a court to which the aggrieved parties may apply would afford no substantial relief. The business of transportation by rail has been often designated as a quasi-public function. In many countries the public itself discharges that duty. In our country it has been left to private enterprises. If the public delegates to others this duty, it should at least provide some means whereby the reasonableness of the charges imposed and the fairness of the practices involved may be determined at the public expense.

"In our view of the matter this was the leading notion in enacting the Interstate Commerce Law and creating this Commission. The Commission is not a court. It is a Commission in the nature of an administrative body, invested with certain specified powers by the Act which created it. In the exercise of those powers it is required at times to

⁴⁰ Seventeenth Annual Report of I. C. C. (1903), page 32.

hear and pass upon complaints of individual shippers against interstate carriers. This, however, is but a small part of its duties, as an examination of the Act itself conclusively shows. This in terms declares that 'the Commission is hereby authorized and required to execute and enforce the provisions of this Act,' and the fullest power of inquiry into the methods and practices of interstate carriers is accorded. The 13th section, after stating who may make complaint, how such complaint shall be served upon the carrier, in what manner the complaint may be satisfied by the carrier, continues:

"If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

"In *Interstate Commerce Commission v. Brimson*,⁴¹ the Supreme Court of the United States examined at great length the scope and purposes of this Act, saying, among other things:

"All must recognize the fact that the full information necessary as a basis of intelligent legislation by Congress from time to time upon the subject of interstate commerce cannot be obtained, nor can the rules established for the regulation of such commerce be efficiently enforced otherwise than through the instrumentality of an administrative body, representing the whole country, always watchful of the general interest, and charged with the duty not only of obtaining the required information, but of compelling by all lawful methods obedience to such rules.

"In this view of the law we can not, when a complaint involving a question of general public interest is brought to our attention, merely say to the complainant: 'Employ your attorney, file your complaint, produce your proofs, state your claims, and we will decide the issue.' Shippers could not and will not be put to the expense of prosecuting complaints before the Commission ordinarily under those conditions, as appear both from the nature of the case and from experience of the Commission; nor, in our view, should

⁴¹ *Interstate Commerce Commission v. Brimson*, 154 U. S. 447, 38 L. ed. 1047, 14 Sup. Ct. 1125.

they be required to do so. The investigation is for the public benefit and should be conducted at the public expense. Whenever complaint is made which involves a question of general application, either as to the unreasonableness of a rate or the existence of some discriminating practice, we deem it our duty to investigate that matter without expense to the complainant. This investigation may be prosecuted in two ways. The Commission may begin a proceeding upon its own motion, or it may, in the language of the thirteenth section, 'investigate the matters complained of in such manner and by such means as it shall deem proper.' It often happens that the most inexpensive, more effective, and the most expeditious method is to proceed in the pending case by appointing some one to appear at the expense of the Government in the public interest. * * * * If our decision concerned the complainant alone it might with great propriety be said that he should take the consequences of his own laches; but where the decision is to become a precedent in numberless other instances, where its effect upon the complainant is utterly insignificant in comparison with the effect upon the general public, it will be seen that the rule can not properly be enforced. Broadly speaking, it may be said that whenever this Commission has notice by formal complaint, or otherwise, of an apparent infraction of the Act to Regulate Commerce which ought in its opinion to be examined, and in the nature of things will not be or can not be without the assistance of the Government, we deem it our duty to proceed with as full an investigation of the matter as the time and means at our disposal will permit."

§ 13. Special Agents or Examiners.

¶ A. SPECIAL AGENTS OR EXAMINERS TO INSPECT THE ACCOUNTS, RECORDS AND MEMORANDA KEPT BY CARRIERS.

The Act authorizes the Commission to employ special agents or examiners who shall have authority under the order of the Commission to inspect and examine any and all accounts,

records, and memoranda kept by the carriers subject to its provisions.⁴² By virtue of this authority the Commission organized a Board of Examiners for the purpose of the inspection and supervision of the accounts and records of common carriers. See *Section 14, Paragraph C, post*.

¶ B. SPECIAL AGENTS OR EXAMINERS TO ADMINISTER OATHS,
EXAMINE WITNESSES AND RECEIVE EVIDENCE.

To carry out and give effect to the provisions of the Acts or any of them, the Commission is authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.⁴³

¶ C. PUNISHMENT OF SPECIAL EXAMINER WHO DIVULGES FACTS
OR INFORMATION WITHOUT AUTHORITY.

Any examiner who divulges any fact or information which may come to his knowledge during the course of an examination, except in so far as he may be directed by the Commission or by a Court or Judge thereof, shall be subject, upon conviction in any court of the United States, of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment to a term of not exceeding two years, or both.⁴⁴

§ 14. Departments of the Commission and Distribution of
its Duties.

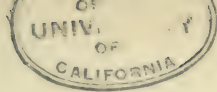
For the systematic and efficient performance of its duties, the employés of the Commission have been organized into several administrative divisions, i. e.,

- A. Operating Division.
- B. Division of Rates and Transportation.
- C. Bureau of Statistics and Accounts.
- D. Division of Claims.
- E. Division of Law.
- F. Division of Prosecution.

⁴² Act, Section 20.

⁴³ Act, Section 20.

⁴⁴ *Ibid*.



The unification and coordination of these several branches of the Commission has tended to greatly facilitate its work.

The following summary enumerates the duties of the several divisions and shows the general distribution of the work of the Commission:

¶ A. OPERATING DIVISION.

The administrative and supervisory work of the Commission is performed by the Operating Division. The duties of this division are necessarily diversified and miscellaneous in character. The principal duties of this division are to carry out through the Secretary of the Commission the acts and official orders of the Commission. The work of this division is distributed among the several branches thereof, brief reference being here made to the work of the more important branches.

Branch in Charge of the Docket Work.

The docket work of the Commission consists in the main in the filing, serving, and recording in the official docket of complaints received by the Commission, as well as the records and service of orders entered by the Commission instituting inquiry and investigation as to the manner and method in which the common carriers, subject to the Act to Regulate Commerce conduct and manage their business. Besides this there is the issuing of subpoenas as well as the preparation and the publication of opinions in cases decided, the records and service of orders, and the preparation and service of all notices in the assignment of cases for hearing and argument. Before a complaint is filed it is carefully examined, and when found to be in the proper form is served by registered mail on the parties to the proceeding, with notice to answer or satisfy the complaint within a specified time, usually twenty days. When the complaint has been answered the case is at issue and the parties may proceed to submit their testimony, either by deposition or orally, at such time and place as the engagements of the Commission will permit. The testimony in cases before the

Commission is usually taken, however, at a place convenient to the parties, and when such testimony is concluded the case is ready for oral argument and the submission of briefs. Not until this stage is reached is the proceeding considered ready for submission. After each case is decided by the Commission its report and opinion is printed. A certified copy of this report and opinion together with the order of the Commission entered thereon, is promptly served by registered mail on the parties to the proceeding.⁴⁵

Safety Appliance Branch.

The safety appliance branch of the Operating Division performs that part of the Commission's work in connection with the enforcement of the Safety Appliance Law. This branch consists of a force of inspectors who are continuously employed in examining the equipment of the various railroads and in the inspection of the safety appliances thereon. The work is in charge of a chief inspector who assigns the inspectors to such territory as the work may require. Reports are made by the inspectors to the Commission of all the cars examined and defects found. A daily record of the work of each inspector is kept. Reports of inspection are examined and filed and transcripts or extracts are sent to the railroads concerned, calling attention to the condition of the equipment with a view to securing better conditions. Correspondence is conducted with regard to this matter from this branch of the office under the direct supervision of the Secretary of the Commission. Information filed by the inspectors in regard to violations of the Safety Appliance Law is examined and if evidence sufficient for prosecution be shown, the matter is brought to the attention of the proper district attorney for action. A record is kept of the conditions existing on each railroad inspected, and a tabulation of the reports received is made to show the condition of the equipment at all times.⁴⁶

⁴⁵ Annual Reports of I. C. C., 3d (1889), 13th (1899), 17th (1903), 18th (1904).

⁴⁶ Annual Reports of I. C. C., 17th (1903), 18th (1904).

Branch in Charge of Accident Reports.

Under the Act of March 3, 1901, better known as the Accident Reports Act,⁴⁷ all common carriers engaged in interstate commerce are required to make and file monthly reports of their train accidents, and of all accidents to their passengers or to employés while in their service and actually on duty, as well as collisions and derailments. These reports are examined, corrected, and checked as soon as they are received by the Commission, and memoranda of all errors and omissions are at once made and forwarded to the respective officers. They are then separated into different classes for the purposes of tabulation. The statistics from these accident reports are compiled and published in quarterly bulletins which are distributed to the general public, representing more than six thousand persons. The detection of errors in these reports requires great vigilance and occasions much correspondence.⁴⁸

Stenographic and Typewriting Force.

The stenographic and typewriting force of the Operating Division is employed to take and transcribe the testimony at public hearings of the Commission, as well as to handle all the work involved in the performance of the official duties of the Commission.⁴⁹

In all cases three copies of this testimony are made and in many of the proceedings several additional copies are called for by interested parties.⁵⁰

Mailing Branch.

A certain portion of the Commission's employés keep up the mailing lists which consist of the addresses of a great many thousand persons who receive the annual reports

⁴⁷ Accident Reports Act, approved March 3, 1901, 34 Statutes at Large, 823. See Appendix for copy of Act.

⁴⁸ Annual Report of I. C. C., 17th (1903), 18th (1904).

⁴⁹ Annual Reports of I. C. C., 13th (1899), 17th (1903).

⁵⁰ Ibid.

of the Commission, the quarterly bulletins of accidents, the decisions and opinions of the Commission, and miscellaneous documents published by the Commission.⁵¹

Miscellaneous.

In addition to the duties previously enumerated is the keeping of the accounts of disbursements, the purchase and charge of stationery and all other supplies for the Commission, the receipt, answering, filing, and indexing of general correspondence, the distribution of annual reports, decisions, opinions and other official documents, with the work incidental to the preparation for printing the same, and various other duties too numerous to mention in detail. Among the duties performed by this division at times is the preparation of the lists of National, State, and local commercial and agricultural organizations of the United States, copies of the inspectors' reports, market values of railroad securities, and other documents published or distributed by the Commission.⁵²

¶ B. DIVISION OF RATES AND TRANSPORTATION.

The Division of Rates and Transportation has charge of the tariffs, contracts, classifications, and other documents filed with the Commission under Section 6 of the Act. The general work of this division includes the recording and acknowledgment of documents received from the carriers, the examination, indexing and filing of the various papers, and the correspondence resulting from failure on the part of carriers to meet the requirements of the Act and orders of the Commission in the construction and filing of tariffs; also the preparation of data and information regarding rates for use in connection with the complaints, and keeping of various records and other special work.⁵³

The special work of this division in complying with the

⁵¹ Annual Reports of I. C. C., 13th (1899), 17th, (1903).

⁵² Ibid.

⁵³ Annual Reports of I. C. C., 3d (1889), 13th (1899), 18th (1904).

demands for information regarding tariffs filed with the Commission and especially the examination of tariffs and preparation of statements showing rates in effect at different periods grows more difficult with the accumulation of documents in the files.⁵⁴

This division is in charge of the Auditor, who prepares at the directions of the Commission certified copies of the contents of tariffs, contracts and other documents filed with the Commission to be used as evidence in court.

¶ C. BUREAU OF STATISTICS AND ACCOUNTS.

The Commission shortly after its organization in 1887, created a Division of Statistics which had special charge of the annual reports made by the railroad companies to the Commission pursuant to the twentieth section of the Act to Regulate Commerce. This involved the examination of every report made; the correction of errors found therein, the compilation of returns embraced in the reports on that subject together with the deduction of results therefrom, and the appropriate comment on the data published. In addition to these duties, the investigation of the special questions in railway statistics is taken up from time to time.⁵⁵ The preparation and distribution of the blank form of annual report from carriers with accompanying pamphlets is also a part of the work of this division.⁵⁶ The work also involves a detailed examination and verification of the returns of the carriers' reports, as well as compilation of data and the preparation of the statistical report published. Beginning with the year 1888 this division published annually a report entitled "Annual Report on the Statistics of Railways in the United States."⁵⁷ Another report issued each year since 1892, is the "Preliminary Report on the Income of Railways in the United States," which is designed to

⁵⁴ Annual Reports of I. C. C., 13th (1899), 17th (1903).

⁵⁵ Annual Reports of I. C. C., 3d (1889), 13th (1899), 18th (1904).

⁵⁶ Ibid.

⁵⁷ Ibid.

show at the earliest possible date the general results of railway operations.⁵⁸ These two reports from the year 1896 to 1906 inclusive, were included as appendices to the annual report of the Commission to Congress. The reports, however, became so voluminous that they are now issued in separate volumes.

The Commission now issues a bulletin at regular intervals which is compiled from the monthly reports of carriers of their operating revenues and operating expenses. The Commission has announced that this summary will, in effect, take the place of the preliminary report on the Income Accounts of Railways.

In the fall of 1906, on account of the increased responsibilities imposed by the twentieth section of the Act to Regulate Commerce, as amended, this division was enlarged to include supervision over railway accounts as well as over the compilation of railway reports, for which purpose a Board of Examiners has been organized as hereinafter explained. Meantime the development of the work was such as to make advisable a change in the title, the title adopted being "Bureau of Statistics and Accounts."⁵⁹ The head of this division is called the Statistician.

Division of Accounts.

The Division of Accounts comprises that part of the Bureau of Statistics and Accounts which is in charge of the development of a uniform system of accounts for all carriers subject to the jurisdiction of the Commission and the supervision of the Board of Examiners organized under the authority granted by Section 20 of the Act to Regulate Commerce.⁶⁰

The general system of accounting prescribed for carriers was completed when, under date of June 21, 1909, the Commission issued orders promulgating the classification

⁵⁸ Annual Reports of I. C. C., 13th (1899), 17th (1903).

⁵⁹ Twenty-Second Annual Report of I. C. C. (1908).

⁶⁰ Twenty-Third Annual Report of I. C. C. (1909).

of expenditures for additions and betterments and the form of general balance sheet statement. These orders are the most important accounting orders which the Commission has thus far promulgated, for the reason that they undertake to define explicitly and in detail the items which make up a statement of corporate assets and liabilities. It is through the rules covered by these orders, also, that the Commission has given expression to its views relative to the correct accounting treatment of abandoned property and of additions and betterments paid for out of current revenue. As a matter of information, it may be added that the rules referred to have no bearing upon the question of the issue of securities, no authority having been conferred upon the Commission for dealing with that question.⁶¹

Division of Statistics.

This Division has charge of the reports of carriers and compilation of returns therefrom, including the annual, monthly and special reports of carriers. In its report to Congress for the year 1909, the Commission stated: "The most interesting attainment in the statistical work during the past year is found in the compilations of the Section of Monthly Reports. Beginning with July 1, 1907, the railways have filed each month a statement of revenues and expenses. Under date of May 31, 1909, a bulletin was published, compiled from these monthly reports, covering the nine months ending March 31, for the fiscal years 1908 and 1909. This bulletin is the first of a series of monthly statements which it is designed to publish. * * * Under the order of the Commission, carriers are given thirty days in which to file their monthly reports, and thirty days are required for their examination and compilation, from which it appears that authoritative information covering the revenues and expenses of the reporting carriers is prepared for publication within sixty days of the close of the month to which the statements pertain."⁶²

⁶¹ Twenty-Third Annual Report of I. C. C. (1909).

⁶² Ibid.

Board of Examiners.

The twentieth section of the Act to Regulate Commerce, as amended, makes provision for the employment of special agents or examiners "who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by the carriers."

This is recognized as an important provision of the law. The Commission has stated that "the examination contemplated will enable it to enforce conformity to the rules of accounting that have been prescribed, and to ascertain whether or not the net revenues accruing from operations, or the profit and loss which appears on the balance sheet, as published by the carriers and reported to the Federal and State Governments, are correctly stated. This is a result of paramount interest to every investor in railway securities, as well as to the public at large, for the reason that it tends to give greater stability to commercial conditions and greater security to railway investments. Such an examination as is contemplated by the law will also furnish added security to the shippers, in that it will disclose unlawful practices in case such practices exist.

"The influence of a board of examiners for railway accounts will, in many respects, be similar to that which follows the examination of national banks by the agents of the Comptroller of the Currency."⁶³

The plan of organization of the board of examiners, by means of which it is expected that the system of uniform accounts prescribed by the Commission will be made effective, has been well defined, as well as the purpose of both the general and special examinations and the rules and methods for conducting them.⁶⁴ The Commission expressed the opinion that the board of examiners is essential for the exercise of the phase of supervisory control contemplated by the Congress under the twentieth section of the Act.⁶⁵

⁶³ Annual Report of I. C. C., 21st (1907), 22d (1908).

⁶⁴ Twenty-Second Annual Report of I. C. C. (1908).

⁶⁵ *Ibid.*

The Commission further stated that "it is evident that a high grade of expert intelligence is required for the successful accomplishment of the task undertaken, especially during the initial years of the organization in which the character and standing of this branch of the Commission's service is being established, and some difficulty has been encountered in securing a sufficient number of men of broad experience and technical training. As a result, however, of persistent effort on the part of those who have this matter in charge supported by the hearty cooperation of the Civil Service Commission, the difficulty mentioned seems in a fair way removed."⁶⁶

This board is composed of expert accountants and men who have had experience in the auditing departments of railroads and is in charge of a Chief Examiner.

This board holds special and general examinations. The Commission stated: "It is the purpose of special examinations to gather specific information relative to particular questions; the general examinations, on the other hand, are in the nature of a comprehensive examination of the accounts of carriers. The purpose of general examination is to determine whether or not the accounting orders and general transportation rules and principles laid down by the Commission are in fact observed by the carriers, and to note any irregularities reported which may be made the occasion of prosecution. The ultimate purpose of the task assigned to the board of examiners is to create a condition in which improper practices will not take place because of the certainty of their discovery and exposure, and to provide a means by which the Commission can satisfy itself that such administrative rulings and transportation principles as it lays down are in fact observed by all carriers."⁶⁷

Statistical Groups.

The statistics are classified into ten districts or terri-

⁶⁶ Twenty-Second Annual Report of I. C. C. (1908).

⁶⁷ Twenty-Third Annual Report of I. C. C. (1909).

tories. The necessity for this classification into groups arose from the great diversity in the conditions under which railways are operated in various parts of the country.⁶⁸ The groups or territorial divisions of the country referred to are as follows:⁶⁹

Group I. This group embraces the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

Group II. This group embraces the States of New York, Pennsylvania, New Jersey, Delaware and Maryland, exclusive of that portion of New York and Pennsylvania lying west of a line drawn from Buffalo to Pittsburg via Salamanca, and inclusive of that portion of West Virginia lying north of a line drawn from Parkersburg east to the boundary of Maryland.

Group III. This group embraces the States of Ohio, Indiana, the southern peninsula of Michigan, and that portion of the States of New York and Pennsylvania lying west of a line drawn from Buffalo to Pittsburg via Salamanca.

Group IV. This group embraces the States of Virginia, North Carolina, South Carolina, and that portion of the State of West Virginia lying south of a line drawn east from Parkersburg to the boundary of Maryland.

Group V. This group embraces the States of Kentucky, Tennessee, Mississippi, Alabama, Georgia, Florida, and that portion of Louisiana east of the Mississippi River.

Group VI. This group embraces the States of Illinois, Wisconsin, Iowa, Minnesota, the northern peninsula of the State of Michigan, and that portion of the States of North Dakota and Missouri lying east of the Missouri River.

Group VII. This group embraces the States of Montana, Wyoming, Nebraska, that portion of North Dakota and South Dakota lying west of the Missouri River, and that portion of the State of Colorado lying north of a line drawn east and west through Denver.

Group VIII. This group embraces the States of Kansas, Arkansas, that portion of the State of Missouri lying south of the Missouri River, that portion of the State of Colorado lying south of a line drawn east and west through Denver, that portion of the State of Texas lying west of Oklahoma, and the Territories of Oklahoma, Indian Territory, and the portion of New Mexico lying northeast of Santa Fe.

Group IX. This group embraces the State of Louisiana, exclusive of the portion lying east of the Mississippi River, the State of Texas, exclusive of that portion lying west of Oklahoma, and the portion of New Mexico lying southeast of Santa Fe.

Group X. This group embraces the States of California, Nevada, Oregon, Idaho, Utah, Washington, the Territory of Arizona, and that portion of the Territory of New Mexico lying west of Santa Fe.

¶ D. DIVISION OF CLAIMS.

The Division of Claims is charged with the investigation

⁶⁸ Fifth Annual Report of I. C. C. (1891).

⁶⁹ Tenth Annual Report of I. C. C. (1896).

of claims involving reparation by the carrier to the shipper on account of alleged overcharge due to the application of excessive and unreasonable rates, misrouting, etc., which may be settled on informal complaint and are adjustable under the rules promulgated by the Commission.⁷⁰

An important service is thus performed by the Commission to shippers throughout the country in the settlement of meritorious claims, involving comparatively small sums, where the claimants would not feel justified in devoting the time and incurring the expense incident to a formal hearing.⁷¹

During the year ending November 30, 1908, informal reparation claims were authorized by the Commission in 1,012 cases aggregating about \$154,703.⁷²

The work of this division was formerly under the Operating Division.

¶ E. DIVISION OF LAW.

The Law Division is composed of a staff of attorneys and assistants who are regularly employed by the Commission and at times special counsel, as provided for in the Act, for particular proceedings; and in the control of the Solicitor of the Commission. This department attends to all the legal business of the Commission and represents the Commission when it is a party to proceedings in the Federal Courts as well as in some proceedings before the Commission itself.

¶ F. DIVISION OF PROSECUTIONS.

Early in the year 1907 the Commission organized a division known as the "Division of Prosecutions," to take full charge of investigations into criminal violations of the Act to Regulate Commerce. On receipt of information of any violation of the Act amounting to a criminal infraction of

⁷⁰ Twenty-Second Annual Report of I. C. C. (1908).

⁷¹ Ibid.

⁷² Ibid.

the law, it becomes the duty of this division to make such investigations as may be necessary to determine whether or not the matter is one proper to be brought to the attention of the Department of Justice. In any case where it is finally determined by the Commission that a criminal prosecution is proper, it is the duty of this division to prepare the case for presentation to the United States attorney in the district having jurisdiction.⁷³

§ 15. Procedure and Practice before the Commission.

See *Chapter 47, post*.

§ 16. Administrative Rulings, General Orders, Opinions and Tariff Regulations of the Commission.

¶ A. ADMINISTRATIVE RULINGS AND OPINIONS.

“Since the last amendment of the Act to Regulate Commerce, of June, 1906, the Commission has occupied considerable time in giving administrative construction to various provisions of the law for the guidance of both shippers and carriers. To secure the best results of legislation with the least possible delay there was obvious need of a correct and uniform interpretation of the statute. Therefore, without reference to questions arising in particular cases, and to avoid unnecessary controversy, the Commission has considered it its duty to construe the law in advance wherever it appeared obscure or ambiguous, so that the obligations of the railroads and the rights of the public might be promptly understood. This has resulted in numerous rulings explaining the Commission’s view of the meaning and application of the different sections and paragraphs of the statute. These rulings have, in practically every instance, been accepted by the carriers, even in cases where their legal advisers were not entirely in accord with the opinion of the Commission. The benefits of this course are beyond question. The Com-

⁷³ Annual Reports of I. C. C., 21st (1907), 22d (1908).

mission has endeavored to adopt a workable construction of the law in all cases, and has, as a rule, announced its conclusions in matters of importance only after conference and discussion with representative shippers and traffic officials.”⁷⁴

“These rulings are promulgated from time to time in circular form and are distributed to interested persons. Other inquiries are answered by individual Commissioners as informal rulings which were authorized or approved by the Commission in conference.”⁷⁵

The Commission has stated that “numerous questions as to the meaning and application of various provisions of the statute are submitted from time to time in correspondence and personal interviews. Many of these questions are of great practical importance, and not a few of them difficult of solution. It is the policy of the Commission to answer all proper inquiries of this kind with an indication of its views upon the points presented. If a given question relates to matters of common interest or frequent occurrence, the official opinion is usually announced in conference rulings, tariff circulars, and the like, which are thereupon printed and distributed for general information. In most instances these rulings have been accepted as correct expositions of the law and subsequent practices brought into conformity therewith. By this means a comprehensive code of rules is in process of development, the observance of which operates with increasing influence to promote just and impartial conduct. Moreover, the rules so promulgated have the highly beneficial effect of avoiding a multitude of contentions which otherwise would come to the Commission in the form of individual complaints. This method of administration, which aims to prevent uncertainty and dispute by an authoritative construction of the act, appears to be regarded with special favor, and it is believed that the efforts of the Commission in this direction are of distinct and permanent value.”⁷⁶

⁷⁴ Twenty-First Annual Report of I. C. C. (1907).

⁷⁵ Twenty-Second Annual Report of I. C. C. (1908).

⁷⁶ Twenty-Third Annual Report of I. C. C. (1909).

The authority of the Interstate Commerce Commission to make general orders in proper cases seems to be substantially affirmed by the Supreme Court of the United States in the *Import Rate Case*,⁷⁷ as the opinion delivered therein by Mr. Justice Shiras contains the following:

“That if the Commission, instead of confining its action to redressing, on complaint made by some particular person, firm, corporation or locality, some specific disregard by common carriers of provisions of the Act, proposes to promulgate general orders, which thereby become rules of action to the carrying companies, the spirit and letter of the Act require that such orders should have in view the purpose of promoting and facilitating commerce, and the welfare of all to be affected, as well the carriers as the traders and consumers of the country.”

The Court further stated, however, in this case:

“That, if the Commission has power, of its own motion, to promulgate general decrees or orders, which thereby become rules of action to common carriers, such exertion of power must be confined to the obvious purposes and directions of the statute, since Congress has not granted it legislative powers.”

¶ B. TARIFF REGULATIONS.

Definiteness, clearness and simplicity in stating transportation charges, uniformity in applying the rate so stated, and stable conditions, are ends aimed at in the law and sought by the Commission in administering it.

Prior to the enactment of the amended law of 1906, the time of notice of changes in rates required by the Act was too short to give stability to conditions of transportation, even if the terms of law had been carefully observed. Tariffs were issued upon statutory notice and upon no notice at all. Opportunities to get business were met by issuing a tariff “expiring with this shipment;” by quotation of rates found

⁷⁷ *Import Rate Case*, *Texas & Pacific Railway Co. v. Interstate Commerce Commission* (1895), 162 U. S. 197, 40 L. ed. 940, 16 Sup. Ct. 666.

in some other carrier's tariffs and applicable via another route; by quotation of rates not found in any tariff; by forwarding under regular rates and refunding an agreed-upon portion thereof, and by forwarding under regular tariff rates and agreeing to "protect" any rate of any competing carrier.

As a necessary outcome of such practices, the official files of tariffs were very voluminous, and contained an endless number of contradictions and conflicts. No one not directly interested in or connected with this work can appreciate the chaotic condition of the carriers' tariffs at the time the amended Act became effective. As a practical matter, it was necessary to accept the tariffs then on file as the only ones under which business and transportation could continue. To bring order out of this condition of chaos, the Commission, after exhaustive conferences with traffic officials of carriers, formulated a code of regulations governing the construction of tariffs, which was promulgated to become effective May 1, 1907, and June 1, 1907, as to freight and passenger tariffs, respectively.

The code is modified or supplemented by the Commission from time to time, as experience demands, and in this way many misunderstandings and differences of opinion are harmonized. The Commission has said that: "The underlying purpose is to maintain all of the substantive and important features of the spirit and letters of the law, and at the same time impose as little hardship, expense or inconvenience as possible upon either carriers or their patrons.

"Lax methods on part of carriers in years gone by resulted in the practical abandonment of many rate schedules and in adopting others in lieu thereof, without properly canceling from the files of the Commission the schedules so discarded. The Commission's regulations require each carrier to provide an index of its tariffs, and a methodical check of such indexes against the files of the Commission has been undertaken. In this way the records and files of the carriers and of the Commission are being brought into har-

mony with each other, and thousands of old and obsolete tariffs, some of them dating as far back as 1887, have been, and are being, formally and lawfully canceled from the files of the Commission.

“Every instance in which a tariff containing rates or rules that conflict with another tariff, or that are uncertain and ambiguous in their terms, is superseded by a tariff that is free from those features, reduces the number of controversies between shippers and carriers involving the proper charge to be made for a service rendered. The Commission’s regulations do not permit the use of indefinite or vague rules in rate schedules, and the Commission has required the elimination and abandonment of certain provisions which heretofore were freely and generally used, but which led to endless disputes, and, in some instances, made it utterly impossible for even the most expert to determine definitely which was the lawful rate among two or more rates that might be claimed to apply, or did, in fact, apply; but which were in conflict with each other.

“Under former practices, and the tariff conditions which grew up thereunder, there were multitudes of instances in which overcharges were claimed by shippers and in which parts of the sums paid were subsequently refunded by carriers. Simplification and directness in the preparation of rate schedules, and elimination of ambiguities and conflicts, must operate to reduce the number of such instances. Manifestly, better understandings and more satisfactory conditions will obtain when the correct charges are assessed and paid in the first instance, and when questions of overcharges, undercharges and refunds occur but rarely, and then only because of clerical error.

“The Act authorized the Commission to determine and prescribe the form in which the schedules required by the Act shall be prepared and arranged.⁷⁹ It requires that the Commission and the public shall be given statutory notice of changes in rate schedules.⁸⁰ It authorized the Commis-

⁷⁹ Act, Section 1.

⁸⁰ Ibid.

sion, in its discretion, and for good cause shown, to allow changes upon less than statutory notice, and to modify the requirements of the sixth section in respect to publishing, posting and filing tariffs. The Commission has prescribed certain regulations as to the form in which rate schedules shall be prepared and arranged, and which govern the publishing, posting and filing of such schedules, and in the enforcement of such regulations it exercises the right and authority to refuse to accept for filing rate schedules which, to an extent justifying that action, fail to fulfill the requirements of the law or of the regulations. While a careful scrutiny of all of the features of every rate schedule filed with the Commission is wholly impracticable, all schedules offered for filing are scrutinized as to certain features, and gradually, more and more, are being subject to careful examination and criticism by the Commission. Minor faults are brought to the attention of the carriers in correspondence. It is confidently believed that, as a result of this practice and of the work that has been done in laying the foundation for greatly improved rate schedules, much more progress will be apparent in the future. It is gratifying to note that the Commission is now receiving assurances from many traffic officers of carriers that regulations which, at first, were thought oppressive and impracticable, have proven to be wholly practicable and desirable, and it is frequently stated that, even if the regulations were withdrawn, practices established thereby would not be forsaken. The Commission has also received from shippers many expressions of commendation of its work in this line and gratification at the results thereof.

“In a few instances the Commission has been obliged to resort to formal orders for the reissue of old schedules that were in exceptionally bad shape.

“In the twelve months ended November 30, 1908, there were filed with the Commission 228,490 tariff publications, all containing changes in rates and rules governing transportation.”⁸¹

⁸¹ Annual Reports of I. C. C., 21st (1907), 22d (1908).

§ 17. Reports of Investigations, Decisions, Orders and Requirements of the Commission.

Whenever an investigation is made by the Commission, it is its duty to make a report in writing in respect thereto, which states the conclusion of the Commission, together with its decision, order, requirement in the premises, and in case damages are awarded, such report is to include the findings of fact on which the award is made. All reports of investigations made by the Commission are entered of record, and a copy thereof furnished to the complainant, and to any common carrier who may be a party defendant. The Commission is authorized to provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications are competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several states, without further proof or authentication thereof.⁸²

The reports and findings of the Commission upon the evidence relate only to the ascertainment and presentation of all the material facts necessary to fairly and justly present the merits of the controversy, and the Commission does not report evidence which is only cumulative, or which is immaterial or irrelevant, or mere details of evidence already embraced in substantial facts stated, upon which the findings and conclusions of the Commission are made.⁸³

§ 18. Correspondence with the Commission by Carriers on Freight and Passenger Matters.

The Commission has ruled that the best results and understandings will be reached if the conducting of ordinary correspondence between the carriers and the Commission is confined to as few persons as possible. Request was made that the traffic manager or the general freight and passenger agents of each road designate not more than two offi-

⁸² Act, Section 14.

⁸³ Riddle, Dean & Co. v. P. & L. E. R. R. Co. (1888), 1 I. C. R. 773.

cials, or other representatives, to respectively conduct the correspondence with the Commission on freight and passenger matters, and to promptly advise the Commission of such appointments.⁸⁴

§ 19. Library of the Commission.

The literature relating to the subject of public transportation in this country exists very largely in the form of official reports and documents, in pamphlets, and in articles which have appeared from time to time in the periodicals. The number of comprehensive works is small, and anyone who desires to study the question must seek his information from literally hundreds of sources, many of which, unfortunately, are not to be found even in the largest general libraries.

For this reason the Commission has assigned to its library the work of assembling at Washington for permanent preservation, as far as it can be obtained, the great mass of fragmentary and more or less elusive literature, in order that it may be made accessible to those interested in the subject, and that thus may be secured a permanent record of the discussions of theories and experiences connected with transportation matters in this and other countries. The first systematic attempt of the Commission to establish a transportation library was made in 1894, and grew out of the necessity for taking care of the books, pamphlets and documents acquired in the performance of its duties. In 1898 more comprehensive plans in this regard were adopted, and the scope of the effort somewhat enlarged. Since that time accessions to the library have largely increased, until at present the collection comprises many thousand volumes and pamphlets. This collection embraces the official reports and documents of the several State railroad commissions, as well as Congressional and legislative documents bearing upon railroad and transportation matters. It also includes general and special treatises on the various phases of railroad

⁸⁴ Rule 210, Con. Rul. Bul. No. 4 (Nov. 16, 1908).

affairs in this and other countries, foreign official reports and documents, reports of railroad companies, proceedings of the railway technical and other organizations, files of railway periodicals, American and foreign proceedings, and papers of commercial bodies dealing with internal commerce and transportation, and a variety of books and pamphlets relating in one way or another to railroad operations in earlier as well as in more recent years. All of this material is properly arranged and indexed by subject, so as to be available for immediate and practical use.

The collection is steadily enlarged by the purchase, from time to time, of publications deemed desirable by donations from various sources, and by exchange with other libraries of such duplicates of books and pamphlets as have been accumulated. The aim of the Commission is to accumulate a collection of books, railway commission reports, articles relating to railroad reports of foreign countries, and, in fact, to obtain all literature which would be of interest to the student of railway development, management and regulation. The work calls for study and indefatigable attention.

The library of the Commission is of increasing value each year as a reference library. The Commission serves many requests for information by mail on questions pertaining to the railroad and transportation subjects, and the library has proven valuable to the Commission in answering such inquiries. The value of the library is demonstrated by its constant aid to the Commission, to students of railway economics all over the country, to representatives of the press, to foreigners temporarily in Washington, and to the growing needs of the public in general.⁸⁵

§ 20. Annual Reports of the Commission to Congress.

The Interstate Commerce Commission is required by the Act to make a report on or before the first day of December of each year, which is transmitted to Congress.⁸⁶ This re-

⁸⁵ Annual Reports of I. C. C., 14th (1900), 17th (1903), 18th (1904).

⁸⁶ Act, Sections 14 and 21.

port contains such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary. This report also contains the names and compensation of the persons employed by the Commission.⁸⁷ These reports, in addition to a review of the cases decided by the Commission and the courts during the year, contain a vast amount of useful information relating to economic transportation questions, and are very valuable.

The Commission, under the terms of the original Act, reported annually to the Secretary of the Interior, and the report was transmitted by him to Congress. This arrangement, however, was changed by the amendment to the Act of March 2, 1889,⁸⁸ and it now reports annually direct to Congress.

§ 21. Publications of the Commission.

The more important publications issued by the Interstate Commerce Commission are as follows:

Annual Report of the Interstate Commerce Commission to Congress.

Annual Report on the Statistics of Railways in the United States.

Preliminary Report on the Income of Railways in the United States.

Railways in the United States in 1902. (Parts 2, 4 and 5.)

Part II. A forty-year review of changes in freight rates. Development of freight classifications. Changes in competitive rates. Changes in local rates.

Part IV. State regulation of railways. Railway control through commissions. Classes of State railroad commissions. Extension of regulative power of railroad commissions. Method of appointing railroad commissioners. Way of control by railroad commissions. Tendency as to incorporation of railway companies. State railway statutes.

⁸⁷ Act, Section 21.

⁸⁸ 25 Statutes at Large, 855.

Part V. State taxation of railways and other transportation agencies. State railway taxation. Changes in laws of taxation.

This report was planned to consist of five parts. Parts I. and III. have never been published.

Tariff Circular, containing Regulations Governing the Construction and Filing of Freight Tariffs and Classifications and Passenger Rate Schedules; also Administrative Rulings and Opinions.

Tariff Circular, containing Regulations Governing the Construction and Filing of Tariffs and Classifications of Express Companies; also Administrative Rulings and Opinions.

Interstate Commerce Law, as amended to date, and Acts supplementary thereto.

Conference Rulings Bulletin, which contains rulings which have been made by the Commission in conference upon questions raised or submitted in correspondence.

§ 22. Distribution of Official Circulars and Rulings of the Commission.

The Commission has ruled that it is obviously impracticable for it to place copies of its official circulars and rulings in the hands of all the officers of carriers or to furnish copies for distribution among them. That the officers at the head of the traffic departments, or in charge of the passenger and freight departments, respectively, will designate for each road one official in the passenger department and one in the freight department (unless both are under one head officer and one appointment is considered sufficient), to whom such circulars and rulings are to be sent, and arrange for such designated officials to disseminate the information among the interested officers and agents. That report of these appointments be made to the Commission as early as possible. With the view of giving prompt information to those who may be interested, the Commission will, upon application, place upon its mailing list regularly organized boards of trade, chambers of commerce, commercial clubs and shippers' associations, for the purpose of mailing to

them copies of official circulars containing rulings and orders of the Commission.⁸⁹

§ 23. Quotations from Correspondence of the Commission.

The Commission has requested that, if extracts from its correspondence are sent out by carriers, such extracts be made sufficiently full, or that sufficient of the correspondence be presented to give a complete view and understanding of the meaning of the ruling and of the circumstances discussed, or of the inquiry answered therein.⁹⁰

§ 24. Powers and Duties of the Commission.

It should be carefully observed that the Interstate Commerce Commission does not exercise all the power of supervision over interstate commerce conferred upon Congress by the commerce clause in the Federal Constitution.

The jurisdiction of the Commission is confined to that conferred by the Act to Regulate Commerce, and Acts supplementary thereto and amendatory thereof.⁹¹ Section 1 of the Act to Regulate Commerce enumerates in specific terms the commerce subject to its jurisdiction and control.

Inasmuch as the jurisdiction of the Commission is strictly statutory, it must look to what is expressed in or necessarily implied by the Interstate Commerce Law to decide issues arising under it.⁹²

The jurisdiction of the Commission, and its powers and duties relating to the various subjects of transportation, are fully treated of in this work under appropriate chapters.

⁸⁹ Rule 211, Con. Rul. Bul. No. 4 (Nov. 16, 1908); Rule 42, Tariff Circular 16-A.

⁹⁰ Rule 29, Con. Rul. Bul. No. 4 (Jan. 13, 1908).

⁹¹ *Railroad Commission of Kentucky v. L. & N. Rd. Co. et al.* (1904), 10 I. C. C. R. 173; *Traders' & Travelers' Union v. P. & R. Rd. Co.* (1887), 1 I. C. C. R. 122; 1 I. C. R. 371.

⁹² *Brewer v. C. of Ga. Ry. Co. et al.* (1898), 84 Fed. Rep. 258.

CHAPTER III.

NATURE AND LEGAL STATUS OF INTERSTATE COMMERCE COMMISSION.

§ 25. Nature and Legal Status of Body.

The Federal Constitution provides¹ that: "The judicial power of the United States shall be vested in one Supreme Court, and such inferior Courts as the Congress may from time to time ordain and establish. The Judges both of the Supreme and inferior Courts shall hold their office during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office."

Congress, in establishing such "inferior courts" and prescribing their jurisdiction, must confer upon the Judges appointed to administer them the constitutional tenure of office—that of holding "during good behavior"—before they can become vested with any portion of the judicial power of the Government. The Act to Regulate Commerce does not undertake to create an "inferior court" or to invest the commission appointed thereunder with judicial powers and functions. The Interstate Commerce Commission is vested with only administrative powers of supervision and investigation, which falls far short of making it a court, or its actions judicial, in the proper sense of the term. Its action or conclusion upon matters brought before it for investigation is neither final nor conclusive, nor is it vested with authority to enforce its decisions and awards. It hears, investigates, and reports upon complaints made before it, but subsequent judicial proceedings are contemplated and provided for as the remedy for the enforcement of the

¹ Art. 3, Section 1, Federal Constitution.

order or report of the Commission in all cases where the party against whom its decision is rendered does not yield voluntary obedience thereto. The Commission is charged with the duty of investigating and reporting upon complaints; and the facts found or reported by it are given the force and weight of *prima facie* evidence in such judicial proceedings as may thereafter be had for the enforcement of its recommendation or order.² The opinion of the Commission has not the effect of a judicial determination; and in a proceeding to enforce it the Court proceeds to hear the complaint *de novo*.³ The functions of the Commission are those of referees or special commissioners, appointed to make preliminary investigation of, and report upon, matters for subsequent judicial examination and determination. In respect to interstate commerce matters covered by the law, the Commission may be regarded as the general referee of each and every Circuit Court of the United States upon which the jurisdiction is conferred of enforcing the rights, duties, and obligations recognized and enforced by said law.⁴ The Interstate Commerce Commission is not invested and cannot be invested, under the Constitution, with either, purely legislative or judicial power. Its functions are necessarily restricted to the performance of administrative duties, with such *quasi*-judicial powers as are incidental and necessary to the proper performance of its duties.⁵ An investigation conducted before the Commission and the order of the Commission thereon, is not a judicial proceeding as that term is used with reference to Courts of general jurisdiction.⁶ The process of a Federal Court cannot be exercised in aid of an investigation before the Commission as a proceeding before an administrative body is not a "case" or "controversy" within the constitutional powers of the Federal

² Ky. & Ind. Bdge. Co. v. L. & N. R. Co., 37 Fed. Rep. 567 (1889).

³ Shinkle, Wilson & Kreis Co. v. L. & N. R. R. Co. et al., 67 Fed. Rep. 690; 5 I. C. R. 282 (1894).

⁴ Ky. & Ind. Bdge. Co. v. L. & N. R. Co., 37 Fed. Rep. 567 (1889).

⁵ I. C. C. v. C., N. O. & T. P. Ry. Co., 76 Fed. Rep. 183 (1898).

⁶ I. C. C. v. L. & N. Rd. Co., 73 Fed. Rep. 409 (1896).

Courts.⁷ Such proceeding is only *quasi*-judicial and administrative in its nature.⁸ The *quasi*-judicial powers of the Commission are similar to those exercised by the Commissioner of Patents, and, in many respects, by the heads of the various departments of the executive branch of the Government.⁹ In relation to transportation rates, the Commission may be regarded as an expert tribunal.¹⁰

The Commission is a body corporate with legal capacity to be a party plaintiff or defendant in the Federal Courts, and may apply by petition for the enforcement of its orders.¹¹

It is a creature of statute, and its authority is derived from the acts of Congress creating it and from their various amendments. Its function is to administer the Act to Regulate Commerce and acts supplementary thereto and not to enforce conditions found in Federal and other charters. While a violation of the conditions of the Acts of Congress granting the rights of way may be grounds for forfeiture, the remedy is in the Courts, as it is not the province of the Commission to enforce compliance with conditions subsequent found in railroad charters.¹²

The Commission being essentially an administrative body, in the examination of formal complaints, it should get at the real substance of the issue presented unembarrassed by technical considerations.¹³ It deals with practical problems.¹⁴

The Commission, in passing upon the reasonableness or unreasonableness of a rate acts as an administrative body

⁷ Re Application of I. C. C. for an order upon W. G. Brimson et al. to answer questions, 4 I. C. R. 315 (1892).

⁸ I. C. C. v. L. & N. Rd. Co., 73 Fed. Rep. 409 (1896).

⁹ I. C. C. v. C., N. O. & T. P. Ry. Co. (1894), 64 Fed. Rep. 981.

¹⁰ I. C. C. v. L. & N. Rd. Co. et al., 118 Fed. Rep. 613 (1902).

¹¹ T. & P. Ry. Co. v. I. C. C., 162 U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 940 (1896).

¹² Haines v. C., R. I. & P. Ry. Co. et al. (1908), 13 I. C. C. R. 214.

¹³ Missouri & Kansas Shippers' Association v. M., K. & T. Ry. Co., 12 I. C. C. R. 438 (1907).

¹⁴ N. Y. C. & H. R. R. R. Co. et al. v. I. C. C. (1909), 168 Fed. Rep. 131.

having *quasi-judicial* functions; when it determines what the rate should have been and shall be in the future; it exercises certain legislative functions; when it computes the damages or reparation due the shipper by reason of the enforcement and collection of a rate unreasonable to the extent that it exceeds a rate which is declared to be reasonable, there is mere mathematical determination of the damages the shipper should receive. Reparation or damages, therefore, in all matters which concern rates, are reduced, after the Commission has determined what the reasonable rate should have been, to the simplicity of a mathematical calculation; elements of conjecture, speculation, and inference are entirely eliminated. In the matters of discrimination, however, of undue preference, prejudice, or disadvantage, a different field is entered, where the services of a jury may be necessary, not only by reason of the Seventh Amendment to the Constitution, but by the very nature of the subject matter itself. It may be proper, and the Commission has so considered in many instances to award damages in cases of the kind just described, and such awards have been complied with by the carriers, but the proofs to support such awards should be very clear and exact; they should be free from surmise and conjecture.¹⁵

The Commission is the tribunal instituted by the Government to inquire primarily into the facts as to whether discrimination exists. To it the shipper may bring his grievance; before it the railroads have a right to be heard. Until an inquiry is then made, and a finding of an order had, the jurisdiction of a court of equity may not be invoked, because for the court to take hold at that primary point in the case would be to transfer the jurisdiction of the Interstate Commerce Commission—the jurisdiction to first inquire into the fact—to a court of equity.¹⁶

The Commission has no common law jurisdiction.¹⁷ For in-

¹⁵ *Washer Grain Co. v. M. Pac. Ry. Co.* (1909), 15 I. C. C. R. 147.

¹⁶ *United States v. M. C. Rd. Co.* (1903), 122 Fed. Rep. 544; *Railroad Commission of Ohio v. W. & L. E. Rd. Co.* (1907), 12 I. C. C. R. 398.

¹⁷ *Jones v. St. Louis & S. F. Rd. Co.* (1907), 12 I. C. C. R. 144.

stance, it has no power to enforce the specific performance of contractual obligations nor to award damages for the breach of such agreements;¹⁸ nor to consider a claim in the nature of an action of trespass;¹⁹ nor to grant relief to a shipper for injury to goods shipped resulting from delay in transit, detention, loss, breakage, rotting or other deterioration or damage not attributable to a violation of any of the provisions of the Act.²⁰

The Commission has certain original jurisdiction; for example, the power to determine the reasonableness of established rates rests primarily with that body, and not with the courts.²¹

¹⁸ *Traders' and Travelers' Union v. P. & R. Rd. So.* (1897), 1 I. C. R. 371; 1 I. C. C. R. 122. *Commercial Club of Omaha v. C. & N. W. Ry. Co.* (1897), 7 I. C. C. R. 386.

¹⁹ *Council v. W. & A. Rd. Co.* (1887), 1 I. C. C. R. 339; 1 I. C. R. 638.

²⁰ *Duncan v. A. T. & S. F. Ry. Co.* (1893), 6 I. C. C. R. 85; 4 I. C. R. 385.

²¹ *T. & P. Ry. Co. v. Abilene Cotton Oil Co.* (1907), 204 U. S. 426; 51 L. ed. 553; 27 Sup. Ct. Rep. 350; *Clements v. L. & N. Rd. Co.* (1907), 153 Fed. Rep. 979.

CHAPTER IV.

TRANSPORTATION AND COMMON CARRIERS SUBJECT TO THE JURISDICTION OF THE INTERSTATE COMMERCE COMMISSION.

SECTION

26. Provisions in the Act to Regulate Commerce enumerating the Carriers and Transportation subject thereto.
27. Synopsis of the Carriers and Transportation subject to the Act.
28. Interstate Transportation.
29. Intraterritorial Transportation.
30. Transportation within the District of Columbia.
31. Foreign Commerce.
32. Interstate Railroads.
33. State Railroads engaged in Interstate Commerce.
34. State Telegraph and Telephone Companies Engaged in the Transmission of Interstate Messages.
35. Express Companies.
36. Sleeping Car Companies.
37. Telegraph Companies.
38. Telephone Companies.
39. Cable Companies.
40. Fast Freight Lines.
41. Terminal and Belt Railroads handling Interstate Traffic.
42. Foreign Railroads.
43. Bridges and Bridge Companies.
44. Ferries and Ferry Companies.
45. Pipe Lines.
46. Private Car Companies.
47. Inland Water Carriers.
48. Ocean Carriers.
49. Intraterritorial Common Carriers.
50. Street Railways within the District of Columbia.
51. Receivers and Trustees of Common Carriers.
52. Successors to Common Carriers and Purchasers Pendente Lite.
53. Nature of Organization of the Carrier Immaterial to the attaching of Jurisdiction of Commission.

§ 26. Provisions in the Act to Regulate Commerce Enumerating the Carriers and Transportation subject thereto.

The only parties subject to the jurisdiction of the Interstate Commerce Commission are those common carriers engaged in the transportation of persons or property as described in the Act to Regulate Commerce, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Section 1 of the Act (*as amended June 29, 1906, and June 18, 1910*): "That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural and artificial gas by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water, when both are used under a common control, management, or arrangement for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from one place in the United States to an adjacent foreign country, or from any place in the United States, through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to

such place from a port of entry either in the United States or an adjacent foreign country.

Express Companies and Sleeping-Car Companies included.

“The term ‘common carrier,’ as used in this Act, shall include express companies and sleeping-car companies.

Term “Railroad” defined.

“The term ‘railroad,’ as used in this Act, shall include any bridges and ferries used or operated in connection with any railroad, and also to all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation of any of said property.

Term “Transportation” defined.

“The term ‘transportation’ shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in the connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration, or icing, storage, and handling of property transported; and it shall be the duty of every common carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.”

Term "Carrier" defined.

Section 6 of the Act provides that "wherever the word 'carrier' occurs in the Act, it shall be held to mean 'common' carrier."¹

§ 27. Synopsis of the Carriers and Transportation Subject to the Act.

1. Any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural and artificial gas:

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> (a) By pipe lines. (b) Partly by pipe lines and partly by railroad. (c) Partly by pipe lines and partly by water. | } | Who shall be considered and held to be common carriers within the meaning and purpose of the Act to Regulate Commerce. |
|---|---|--|

2. Any common carrier or carriers engaged in the transportation of passengers or property:

- (a) Wholly by railroad.
- (b) Partly by railroad and partly by water, when both are used under a common control, management, or arrangement, for a continuous carriage or shipment.
- (c) Express companies.
- (d) Sleeping car companies.

3. Companies engaged in sending messages from one State,

¹ At common law a common or public carrier is one who undertakes as a business to carry from one place to another the goods of all persons who may apply for such carriage, provided the goods are of the kind which he professes to carry, and the persons so applying will agree to have them carried upon the terms prescribed by the carrier, and who, if he refuses to carry such goods for those who are willing to comply with his terms, becomes liable to an action by the party aggrieved by such refusal. 4 Elliott R. R., § 1391 et seq.; 5 Thomp. Neg. (2d.) § 6415; 2 Amer. & Eng. Encyclopedia of Law, Title "Carriers"; Redfield, "Railway Carriers," 1; Hutchins, "Carriers," § 47; Dwight v. Brewster, 1 Pick. (Mass.) 50; The Niagara v. Cordes, 62 U. S. 21, 16 L. ed. 41; Gisbourn v. Hurst, 1 Salk. 249; Gordon v. Hutchinson, 1 Watts. & S. (Pa.) 285; Orange Bank v. Brown, 3 Wend. (N. Y.) 161; Piedmont Mfg. Co. v. Columbia & G. R. Co., 19 S. Car. 355.

Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country:²

- | | |
|--------------------------|-----------------------------|
| (e) Telegraph Companies. | } Whether wire or wireless. |
| (f) Telephone Companies. | |
| (g) Cable Companies. | |

As follows:

From one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.³

Examples.

1. From one State of the United States to another State of the United States.
2. From one State of the United States to a Territory of the United States.
3. From one State of the United States to the District of Columbia.
4. From a Territory of the United States to a State of the United States.

² From a careful reading of the statute it would seem that telegraph, telephone and cable companies operating wholly within a territory, or the District of Columbia, are exempt from the jurisdiction of the Interstate Commerce Commission as well as the transportation over such lines which is confined wholly within the above named districts.

³ Act to Regulate Commerce, Section 1.

5. From a Territory of the United States to another Territory of the United States.

6. From a Territory of the United States to the District of Columbia.

7. From one place in a Territory of the United States to another place in the same Territory.

8. From the District of Columbia to a State of the United States.

9. From the District of Columbia to a Territory of the United States.

10. Between places within the District of Columbia.

11. From any place in the United States to an adjacent foreign country.

12. From any place in the United States through a foreign country to any other place in the United States.

13. From any place in the United States to a foreign country and carried from such place to a port of transshipment.

14. From a foreign country to any place in the United States and carried to such place from a port of entry, either in the United States or an adjacent foreign country.

It is clear from the language of the Act that Congress had in view the whole field of commerce (excepting commerce wholly within a State) as well that between the States and Territories as that going to or coming from foreign countries.⁴

The provisions of the Act to Regulate Commerce, construed in the light of the principles that apply to interstate commerce as enunciated by the courts of the United States, must be understood as intended to regulate all the commerce subject to the exclusive jurisdiction of Congress, including the agencies and instrumentalities employed and the commodities carried with only the limitations found in the Act itself.⁵

⁴ T. & P. Ry. Co. v. I. C. C., 162 U. S. 197, 16 Sup. Ct. Rep. 666, 40 L. ed. 940.

⁵ Mattingly v. Penna. Co. (1890), 2 I. C. R. 806, 3 I. C. C. R. 592.

§ 28. Interstate Transportation.

¶ A. CONTROL OF CONGRESS OVER INTERSTATE COMMERCE.

The commerce clause of the Federal Constitution provides that "The Congress shall have power * * * to regulate commerce * * * among the several States, and with the Indian tribes."⁶

Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property, and the navigation of public waters for that purpose, as well as the purchase, sale and exchange of commodities. The power to regulate interstate commerce vested in Congress is the power to prescribe the rules by which it shall be governed—that is, the conditions upon which it shall be conducted; to determine when it shall be free from, and when subject to, duties or other exactions. With reference to the subjects of commerce which are local and limited in their nature or sphere of operation the States may prescribe regulations until Congress intervenes and assumes control. When the subjects of commerce are national in character and require uniformity of regulation affecting alike all the States, the power of Congress is exclusive. The commerce between the States which consists in the transportation of persons and property between them, is a subject of national character and requires uniformity of regulation. Congress alone can deal with such transportation, and its non-action is a declaration that it shall remain free from burdens imposed by State legislation.⁷

⁶ Federal Constitution, Article 1, Section 8, Paragraph 3.

⁷ *Gloucester Ferry Co. v. State of Pennsylvania* (1885), 114 U. S. 196; 29 L. ed. 158, 5 Sup. Ct. 826. When the subjects of commerce are national in character and require uniformity of regulation, the power of Congress is exclusive. In addition to the above case of *Gloucester Ferry Co. v. Pennsylvania* see *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *Gilman v. Philadelphia*, 3 Wall. (U. S.) 713, 18 L. ed. 96; *Henderson v. Mayor*, 92 U. S. 259, 23 L. ed. 543; *Mobile Co. v. Kimball*, 102 U. S. 691, 26 L. ed. 241; *Brown v. Houston*, 114 U. S. 622, 29 L. ed. 257, 5 Sup. Ct. 1091.

In general, when exercised by Congress, the power is exclusive of
REGULATION—5.

If any commercial transaction reaches an entirety in two or more States, and if the parties dealing with reference to that transaction deal from different States, then the whole transaction is a part of the interstate commerce of the United States, and subject to regulation by Congress under the Constitution.⁸

The power was vested in Congress to insure uniformity of commercial regulation against discriminating State legislation. It covers property which is transported as an article of commerce among the States, from hostile, or interfering State

all State interference. *Gibbons v. Ogden*, 9 Wheat. (U. S.) 1, 6 L. ed. 23; *Sinnot v. Davenport*, 22 How. (U. S.) 227, 16 L. ed. 243; *Hall v. De Cuir*, 95 U. S. 485, 24 L. ed. 547.

Inaction by Congress amounts to a declaration that all commerce within its exclusive control shall remain free and untrammelled. In addition to the above case of *Gloucester Ferry Co. v. Pennsylvania*, see *Welton v. Missouri*, 91 U. S. 275, 23 L. ed. 347; *Escanaba Co. v. Chicago*, 107 U. S. 678, 27 L. ed. 442, 2 Sup. Ct. 185; *Henderson v. Mayor*, 92 U. S. 259, 33 L. ed. 543; *Brown v. Houston*, *supra*.

The power vested in Congress covers navigation; *Gibbons v. Ogden*, 9 Wheat. (U. S.) 1, 6 L. ed. 23; *Passenger Cases*, 7 How. (U. S.) 283, 12 L. ed. 702. "Commerce is a term of the largest import * * * The power to regulate it embraces all the instruments by which such commerce may be conducted." *Welton v. Mo.* *supra*.

The principles decided in *Gibbons v. Ogden* and *Brown v. Maryland*, *supra*, were cited in the following cases: *In re Eugene Debs et al.*, 158 U. S. 564; 39 L. ed. 1092, 15 Sup. Ct. 900; *Brennan v. City of Titusville*, 153 U. S. 289; 38 L. ed. 719, 14 Sup. Ct. 829; *Harman v. City of Chicago*, 147 U. S. 396; 37 L. ed. 216, 13 Sup. Ct. 306; *Bowman v. C. & N. W. Ry.*, 125 U. S. 465; 31 L. ed. 700, 8 Sup. Ct. 689, 1062; *Leloup v. Port of Mobile*, 127 U. S. 640, 32 L. ed. 311, 8 Sup. Ct. 1101; *Crutcher v. Commonwealth of Kentucky*, 141 U. S. 47, 35 L. ed. 649, 11 Sup. Ct. 851; *Fargo v. Michigan*, 121 U. S. 230, 30 L. ed. 888, 7 Sup. Ct. 857; *Robbins v. Taxing District of Shelby County, Tenn.*, 120 U. S. 489, 30 L. ed. 694, 7 Sup. Ct. 592; *Wabash, St. L. & P. Ry. v. Illinois*, 118 U. S. 557, 30 L. ed. 244, 7 Sup. Ct. 4; *Beatrice Moran v. City of New Orleans*, 112 U. S. 69, 28 L. ed. 653, 5 Sup. Ct. 38; *Pickard v. Pullman Southern Car Co.* 117 U. S. 34, 29 L. ed. 785, 6 Sup. Ct. 635; *N. & W. Ry. Co. v. Commonwealth of Pennsylvania*, 136 U. S. 114, 34 L. ed. 394, 10 Sup. Ct. 958; *Hays v. Pacific Mail S. S. Co.*, 58 U. S. 596, 15 L. ed. 254; *Cooley v. Board of Port Wardens*, 12 How. (U. S.) 299, 13 L. ed. 996.

⁸ *In Re Charge to Grand Jury* (1907), 151 Fed. Rep. 834.

legislation until it has mingled with and become a part of the general property of the country, and protects it even after it has entered a State, from any burdens imposed by reason of its foreign origin. The inaction of Congress in prescribing rules to govern interstate commerce, is equivalent to its declaration that such commerce shall be free from any restrictions.⁹

It seems the better view that the *Territories* and the *District of Columbia* are to be regarded as "States" as that word is used in the commerce clause of the Constitution.¹⁰

For example: A line of railway lying partly in the District of Columbia and partly in the State of Maryland, is subject to the provisions of the Act to Regulate Commerce. Commerce carried on between the State of Maryland and the District of Columbia is not subject to regulation by Maryland laws, and is therefore within the jurisdiction of Congress.¹¹

¶ B. EXTENT OF THE INTERSTATE COMMERCE SUBJECT TO THE PROVISIONS OF THE ACT TO REGULATE COMMERCE.

Under the terms of Section 1 of the Act to Regulate Commerce the following interstate transportation is subject to the jurisdiction of the Interstate Commerce Commission and to the provisions of the Act:

It applies to such interstate transportation wholly by railroad, and partly by railroad and partly by water, when, and only when, both the railroad and water are used by the respective carriers under a common control, management, or arrangement for a continuous carriage or shipment.¹²

1. Oil or other commodity, except water and except natural

⁹ *Welton v. Mo.*, 91 U. S. 275; 23 L. ed. 347.

¹⁰ *Matter of Wilson*, 10 N. M. 32, 60 Pac. 73; 48 L. R. A. 417; *Hanley v. K. C. S. Ry.*, 187 U. S. 617; 23 Sup. Ct. Rep. 214; 47 L. ed. 333; *Stoutenburgh v. Hennick*, 129 U. S. 141; 9 Sup. Ct. Rep. 256; 32 L. ed. 637; affirming *Re Hennick* (1887), 5 Mackey, (D. C.) 489.

¹¹ *Willson v. Rock Creek Ry. of D. C.* (1887), 7 I. C. C. R. 83.

¹² In the *Matter of Jurisdiction over Water Carriers*, 15 I. C. C. R. 205.

and artificial gas, transported by any corporation or any person or persons:

- | | |
|--|--|
| (a) By pipe lines. | } Who shall be considered and held to be common carriers within the meaning and purpose of the Act to Regulate Commerce. |
| (b) Partly by pipe lines and partly by railroad. | |
| (c) Partly by pipe lines and partly by water. | |

2. Passengers or property transported by any common carriers:

- (a) Wholly by railroad.
- (b) Partly by railroad and partly by water, when both are used under a common control, management, or arrangement, for a continuous carriage or shipment.
- (c) Express companies.
- (d) Sleeping-car companies.

3. Companies engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country:

- | | |
|--------------------------|-----------------------------|
| (e) Telegraph Companies. | } Whether wire or wireless. |
| (f) Telephone Companies. | |
| (g) Cable Companies. | |

As follows:

From one State or Territory of the United States, or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States through a foreign country to any other place in the United States.

Examples.

- 1. From the State of Pennsylvania to the State of Illinois.
- 2. From the State of Indiana to the Territory of New Mexico.
- 3. From the State of New Jersey to the District of Columbia.

4. From the Territory of Arizona to the State of Nevada.
5. From the Territory of New Mexico to the Territory of Arizona.
6. From the Territory of Arizona to the District of Columbia.
7. From the District of Columbia to the State of Kentucky.
8. From the District of Columbia to the Territory of New Mexico.
9. From Chicago, Ill., to Boston, Mass., via the Grand Trunk Railway System which passes through the Dominion of Canada.

¶ C. CHARACTER OF SHIPMENT AS INTERSTATE COMMERCE DETERMINED BY CONTRACT OF SHIPMENT.

The determinative feature of a through shipment is an agreement between the parties at the inception of the carriage, that the freight shall be transported to the point of destination.¹³

Whether a shipment is local or interstate depends upon the contract for transportation. Thus, where the contract entered into is for transportation from a point in one State to a point in another State, the character of the shipment as interstate commerce will not be changed to that of a local shipment without a change to that effect in the agreement between the owner of the goods and the carrier.¹⁴ Whenever an article destined to a place without the State is started in transit, it becomes the subject of interstate commerce.¹⁵

When a commodity has been delivered to a carrier to be transported on a continuous voyage or trip to a point be-

¹³ Re Alleged Unlawful Rates and Practices in the Transportation of Cotton by the K. C., M. & B. Rd. Co. et al. (1889), 8 I. C. C. R. 121.

¹⁴ Gulf, C. & S. F. Ry. Co. v. Texas (1907), 204 U. S. 403; 51 L. ed. 540, 27 Sup. Ct. Rep. 360, affirming 97 Texas, 274, 78 S. W. 495, citing *Coe v. Errol*, 116 U. S. 517; 29 L. ed. 715; 6 Sup. Ct. Rep. 475.

¹⁵ *The Daniel Ball*, 10 Wall. (U. S.) 557; 19 L. ed. 999; *Ex Parte Koehler*, Rec. (1887), 30 Fed. Rep. 807.

yond the limits of the State where delivered to the carrier, the character of interstate commerce attaches thereto.¹⁶

¶ D. EFFECT OF TEMPORARY STOPPAGE IN STATE OF INTERSTATE COMMERCE WHILE IN TRANSIT.

Where the transportation of goods destined to a point without the State has actually begun, temporary stoppage within the State, without the intention of abandoning the original movement, will not deprive the transportation of the character of interstate commerce.¹⁷

When a commodity is purchased and shipped from one State to a point in another State the transaction is indelibly impressed with the character of interstate commerce, and the various mutations through which the article passes, and the handlings which it undergoes while in transit, are merely incidental to the movement.¹⁸

¶ E. TRANSPORTATION BEGINNING AND ENDING IN ONE STATE, BUT PASSING THROUGH AN ADJOINING STATE OR TERRITORY.

Goods transported between two points in the same State, where a large part of the route extends through another State or Territory, are subject to the provisions of the Act to Regulate Commerce.¹⁹

A shipment from New York City to Buffalo, N. Y., by way of New Jersey and Pennsylvania, is interstate commerce, and subject to the provisions of the Interstate Commerce Act.²⁰

The Supreme Court of the United States has held that the Railroad Commission of Arkansas cannot, without violating

¹⁶ *Houston, etc., Co. v. Insurance Co. of North America* (1895), 89 Texas, 1, 32 S. W. 889; 30 L. R. A. 713.

¹⁷ *D. & H. Co. v. Commonwealth of Pennsylvania* (1888), 2 I. C. R. 222.

¹⁸ *Hood & Sons v. D. L. & W. Rd. Co.*, 17 I. C. C. R. 15 (1909).

¹⁹ *Hanley v. K. C. S. Ry. Co.* (1903), 187 U. S. 617; 23 Sup. Ct. Rep. 214; 47 L. ed. 333. See also *New Orleans Cotton Exchange v. C., N. O. & T. P. Ry. Co. et al.*, 2 I. C. C. R. 375; 2 I. C. R. 289.

²⁰ *United States v. D., L. & W. Rd. Co.* (1907), 152 Fed. Rep. 269; see *The Daniel Ball*, 10 Wall. (U. S.) 557, 19 L. ed. 999.

the commerce clause of the Federal Constitution, fix and enforce rates for the continuous transportation of goods between two points within the State of Arkansas, where a large part of the route is outside of the State, through the Indian Territory or Texas.²¹ Mr. Justice Holmes said: "The transportation of these goods certainly went outside of Arkansas, and we are of the opinion that, in its aspect as commerce, it was not confined within the State. Suppose that the Indian Territory were a State, and should try to regulate such traffic, what would stop it? Certainly not the fiction that the commerce was confined to Arkansas. If it could not interfere, the only reason would be that this was commerce among the States. But if this commerce would have that character as against the State supposed to have been formed out of the Indian Territory, it would have it equally as against the State of Arkansas. If one could not regulate it the other could not. No one contends that the regulation could be split up according to the jurisdiction of State or Territory over the track, or that either State or Territory may regulate the whole rate. There can be but one rate fixed by one authority, whether that authority be Arkansas or Congress."²²

"It is decided that navigation on the high seas between ports of the same State is subject to regulation by Congress,²³ and is not subject to regulation by the State;²⁴ and, although it is argued that these decisions are not conclusive, the reason given by Mr. Justice Field for his decision in the last cited case disposes equally of the case at bar. To bring the transportation within the control of the State, as part of its domestic commerce, the subject transported must be

²¹ *Hanley v. K. C. S. Ry. Co.* (1903), 187 U. S. 617; 23 Sup. Ct. Rep. 214; 47 L. ed. 333.

²² *Wabash, St. L. & P. Rd. Co. v. Illinois*, 118 U. S. 557; 30 L. ed. 244; 1 I. C. R. 31; 7 Sup. Ct. Rep. 4; *Covington & C. Bridge Co. v. Kentucky*, 154 U. S. 204; 38 L. ed. 962; 4 I. C. R. 649; 14 Sup. Ct. Rep. 1087; *Hall v. De Cuir*, 95 U. S. 485; 24 L. ed. 547.

²³ *Lord v. Goodall, N. & P. S. S. Co.*, 102 U. S. 541; 26 L. ed. 224.

²⁴ *Pacific Coast S. S. Co. v. Railroad Commissioners, etc.*, 9 Sawy. (U. S.) 253; 18 Fed. Rep. 10.

during the entire voyage under the exclusive jurisdiction of the State.’²⁵

¶ F. TRANSPORTATION FROM ANY PLACE IN THE UNITED STATES
THROUGH A FOREIGN COUNTRY TO ANY OTHER PLACE IN
THE UNITED STATES.

Section 1 of the Act to Regulate Commerce subjects the transportation of passengers and property as described therein to the jurisdiction of the Interstate Commerce Commission and to the provisions of the Act, when shipped from any place in the United States through a foreign country to any other place in the United States.

For example: A movement of passengers or property from Chicago, Ill., to Boston, Mass., via Grand Trunk Railway System, which passes through the Dominion of Canada in reaching destination, is subject, under the provisions of the Act, to the jurisdiction of the Interstate Commerce Commission.

Congress derives its power to regulate and control such commerce from the constitutional power to regulate commerce among the several States.²⁶

¶ G. INTERSTATE TRANSPORTATION HANDLED BY A STATE
RAILROAD.

See “*State Railroads Engaged in Interstate Commerce*,” Section 33, *post*.

§ 29. Intraterritorial Transportation.

¶ A. CONTROL OF CONGRESS OVER INTRATERRITORIAL TRANSPORTATION.

A territory, under the Constitution and laws of the United

²⁵ 9 Sawy. (U. S.) 258; 18 Fed. Rep. 13. Decisions in point are *State ex rel. Railroad Warehouse Commission v. C. St. P. M. & O. R. Co.*, 40 Minn. 267; 3 L. R. A. 238; 2 I. C. R. 519; 41 N. W. 1047; *Sternberger v. Cape Fear & Y. Valley R. Co.*, 29 S. C. 510; 2 L. R. A. 105; 7 S. E. 836. See also *Milk Producers’ Pro. Assn. v. D. L. & W. R. Co.*, 7 I. C. C. R. 92, 160.

²⁶ United States Constitution, Article 1, Section 8, Paragraph 3.

States, is an inchoate State,—a portion of the country not included within the limits of any State, and not yet admitted as a State into the Union, but organized under the laws of Congress, with a separate legislature, under a territorial governor and other officers appointed by the President and Senate of the United States.^{26a}

The United States Constitution^{26b} provides that “The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.”

“The power of Congress over the territories of the United States is general and plenary, arising from and incidental to the right to acquire the territory itself, and from the power given by the Constitution to make all needful rules and regulations respecting the territory or other property belonging to the United States. It would be absurd to hold that the United States has power to acquire territory and no power to govern it when acquired. The power to acquire territory, other than the territory northwest of the Ohio River (which belonged to the United States at the adoption of the Constitution) is derived from the treaty-making power and the power to declare and carry on war. The incidents of these powers are those of national sovereignty, and belong to all independent governments. The power to make acquisitions of territory by conquest, by treaty and by cession, is an incident of national sovereignty. The Territory of Louisiana, when acquired from France, and the Territories west of the Rocky Mountains, when acquired from Mexico, became the absolute property and domain of the United States, subject to such conditions as the government, in its diplomatic negotiations, had seen fit to accept relating to the rights of the people then inhabitants of those Territories. Having rightfully acquired said Territories, the United States government was the only one which could impose laws upon them, and its sovereignty over them was

^{26a} Ex parte Morgan. (1883) 20 Fed. Rep. 305.

^{26b} United States Constitution, Article 1, Section 8, Paragraph 3.

complete. No State of the Union had any such right of sovereignty over them; no other country or government had any such right. These propositions are so elementary, and so necessarily follow from the condition of things arising upon the acquisition of new territory, that they need no argument to support them. They are self-evident. Chief Justice Marshall, in the case of the *American & O. Ins. Cos. v. 356 Bales of Cotton*,²⁷ said: 'Perhaps the power of governing a Territory belonging to the United States, which has not, by becoming a State, acquired the means of self-government, may result necessarily from the facts that it is not within the jurisdiction of any particular State, and is within the power and jurisdiction of the United States. The right to govern may be the inevitable consequence of the right to acquire territory. Whichever may be the source whence the power is derived, the possession of it is unquestioned.'''²⁸

Congress may legislate for Territories as a State does for its municipal organizations; it has full and absolute legislative authority over the people of the Territories and over all the departments of the Territorial government.²⁹

Its power does not depend upon the special grant of power, such as the commerce clause of the Constitution.³⁰

¶ B. APPLICATION OF THE ACT TO TRANSPORTATION BETWEEN POINTS WITHIN A TERRITORY.

Section 1 of the Act to Regulate Commerce provides that it shall apply "to any corporation or any person or persons engaged in the transportation of oil or other commodity, ex-

²⁷ *American and O. Ins. Cos. v. 356 Bales of Cotton*, 1 Pet. (U. S.) 511-542, 7 L. ed. 243, cited *De Lima v. Bidwell* (1900), 182 U. S. 1, 45 L. ed. 1041; See *Dorr v. United States* (1904), 195 U. S. 138; 49 L. ed. 128, 24 Sup. Ct. Rep. 808. See early case of *Sere v. Pitot* (1810), 6 Cranch 332, 3 L. ed. 240.

²⁸ *Late Corporation of Latter-Day Saints v. United States* (1890), 136 U. S. 1, 34 L. ed. 481, 10 Sup. Ct. 792.

²⁹ *First National Bank of Brunswick v. County of Yankton* (1880), 101 U. S. 129, 25 L. ed. 1046.

³⁰ *Baer Bros. Merc. Co. v. Mo. Pac. Ry.* (1908), 13 I. C. C. R. 329; reaffirmed in *Nollenberger v. M. P. Ry. Co. et al.* (1909), 15 I. C. C. R. 595.

cept water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) * * * from one place in a Territory to any other place in the same Territory.”

From this it will be noted that the Interstate Commerce Commission has absolute jurisdiction over intraterritorial transportation within the terms of the Act to Regulate Commerce. For example: The transportation of either passengers or property from Phoenix, Arizona, to Flagstaff, Arizona, is subject to the provisions of the Act to Regulate Commerce and to the jurisdiction of the Interstate Commerce Commission.

A careful reading of the statute, however, does not disclose any jurisdiction in the Interstate Commerce Commission over telegraph, telephone or cable companies operating solely within the limits of a territory nor over the transmission of intraterritorial messages.

However, with the admission of Arizona and New Mexico into the Union as States, there will be no further need for this jurisdiction.

§ 30. Transportation within the District of Columbia.

¶ A. CONTROL OF CONGRESS OVER TRANSPORTATION WITHIN THE DISTRICT OF COLUMBIA.

The United States Constitution provides that “Congress shall have power to exercise legislation in all cases whatsoever over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of government of the United States * * *.”³¹

³¹ Federal Constitution, Article 1, Section 8, Clause 17.

In pursuance of the above constitutional provision, Virginia, by an Act of her legislature of December 3, 1789, ceded to the United States that part of her territory subsequently known as the County of Alexandria. Congress passed an Act accepting the cession. Maryland ceded to the United States the County of Washington, and Congress accepted that cession also. The two counties constituted a territory ten miles square, which Congress set apart as the seat of government of the United States, and organized as the District of Columbia, over which the Constitution of the United States requires that Congress should exercise exclusive legislation in all cases whatsoever. However, in July, 1846, Congress retroceded that part of the territory which was ceded by the State of Virginia, and the District of Columbia now comprises that part which was ceded by the State of Maryland.

Exclusive legislation and exclusive jurisdiction over the District of Columbia is conferred upon Congress by the Constitution.³² The District of Columbia has no legislative power, it being a municipal corporation bearing the same relation to Congress that a city does to the legislature of the State in which it is incorporated.³³

The legislative power of Congress over the District of Columbia is plenary, and does not depend upon the special grant of power, such as the commerce clause of the Constitution.³⁴

¶ B. APPLICATION OF THE ACT TO TRANSPORTATION WITHIN THE DISTRICT OF COLUMBIA.

By the first section of the Act to Regulate Commerce Congress has conferred upon the Interstate Commerce Commission control over the transportation within the District of Columbia, and all the rules and regulations prescribed by that body are applicable to such transportation. All the

³² *Cohens v. Virginia* (1820), 6 Wheat. (U. S.) 264, 5 L. ed. 257.

³³ *United States v. McFarland* (1907), 20 App. D. C. 552.

³⁴ *The Employers' Liability Cases* (1908), 207 U. S. 463, 28 Sup. Ct. 141.

provisions of the Act to Regulate Commerce are fully applicable to the common carriers enumerated therein when engaged in transportation within the District of Columbia, and the traffic transported by such common carriers is governed thereby.

Congress has vested in the Interstate Commerce Commission power to enforce obedience to the provisions of the District of Columbia Street Railways Act,³⁵ which provides certain rules and regulations for the government of street railways within the District of Columbia. The Act also requires such street railways to obey such regulations and orders as may be made by the Commission.

A careful reading of the statute, however, does not disclose any jurisdiction in the Interstate Commerce Commission over telegraph, telephone, or cable companies operating solely within the limits of the District of Columbia nor over the transmission of messages between two places within such District.

§ 31. Foreign Commerce.

¶ A. CONTROL OF CONGRESS OVER THE FOREIGN COMMERCE OF THE UNITED STATES.

Congress assumed control over the commerce between the United States and foreign countries under the commerce clause in the Federal Constitution, which provides:³⁶ "That Congress shall have power to regulate commerce with foreign nations. * * *."

¶ B. GENERAL SCOPE OF THE FOREIGN COMMERCE SUBJECT TO THE ACT.

In opening the debate on the 14th day of April, 1886, and explaining the bill for the information of the United States Senate, the chairman of the Senate Select Committee, in discussing this subject, said:

"While the provisions of the bill are made to apply

³⁵ District of Columbia Street Railways Act, approved May 23, 1908. See Appendix for copy of Act.

³⁶ Federal Constitution, Article 1, Section 8, Paragraph 3.

mainly to the regulation of the interstate commerce, in order to regulate such commerce fairly and effectively it has been deemed necessary to extend its application also to certain classes of foreign commerce which are intimately intermingled with interstate commerce, such as shipments between the United States and adjacent countries by railroad, and the transportation by railroad of shipments between points in the United States and ports of transshipment or of entry, when such shipments are destined to or received from a foreign country on through bills of lading. To avoid any uncertainty as to the meaning of these provisions in regard to what may be at the same time in some instances State and foreign commerce, it is expressly provided that the bill shall not apply to the transportation of properties wholly within one State and not destined to or received from a foreign country."

As bearing upon the construction of these provisions of the first section of the Act to Regulate Commerce relating to foreign commerce, it is significant that, after this explanation of this section, thus made by the chairman of the Senate Select Committee, in all the subsequent debates that followed, there seems to have been no difference of opinion in regard to it in either House of Congress, and it was enacted literally as reported by the Senate Select Committee. Congress has here in clear, intelligible and terse language, defined the field of transportation to be regulated, as well as the carriers who were to be supervised in the administration of the statute. That part of this field relating to foreign commerce was the transportation of this commerce between the port of entry and place of destination upon the through bill of lading, such place of destination being in the United States, and such port of entry being either in the United States or in a foreign country adjacent to the United States.

Congress did not undertake to regulate its transportation on the high seas, nor at the foreign ports of shipment, nor in the foreign country adjacent to the United States. But in the one instance, as soon as that commerce is brought

through a port of entry in the United States upon a through bill of lading destined to a place in the United States, and is taken into the United States by a rail carrier or by a carrier part rail and part water, for transportation to its place of destination, it then comes within the jurisdiction of the Act to Regulate Commerce. Also, when that commerce upon a through bill of lading, destined to a place within the United States, comes through a port of entry in an adjacent foreign country, and is brought within the territorial jurisdiction of the United States, it then becomes subject to the regulation of the Act to Regulate Commerce.³⁷

And in other instances the same principles are true as to commerce shipped from any point in the United States to a place in a foreign country, whether adjacent or otherwise, only in the reverse order.

As to foreign commerce, exports and imports, the first section of the Act states just what transportation with foreign countries shall be subject to the Interstate Commerce Commission, and limits that jurisdiction to the transit from the place of origin in the United States to the port of transshipment, and from the port of entry to destination, either in the United States or an adjacent foreign country, thus confining the jurisdiction exclusively to the part of the transportation wholly within the United States.³⁸

This subject may, for convenience in treating, be divided into the following classes:

1. Transportation of passengers or property from any place in the United States to an adjacent foreign country.
2. Transportation of property from any place in the United States to a foreign country (not adjacent) and carried from such place to a port of transshipment.
3. Transportation of property from a foreign country (not adjacent) to any place in the United States and carried

³⁷ New York Board of Trade & Transportation v. P. R. R. Co. et al. (1891), 3 I. C. R. 417, 4 I. C. C. R. 447.

³⁸ In the Matter of Jurisdiction over Water Carriers, 15 I. C. C. R. 205.

to such place from a port of entry, either in the United States or an adjacent foreign country.

4. Messages sent from the United States to any foreign country.

It will be noted that the provisions of the Act to Regulate Commerce apply to transportation to or from a foreign country, although the internal movement may be wholly within one State.³⁹

These different classes are treated of in their respective order in the following paragraphs:

¶ C. TRANSPORTATION OF PASSENGERS OR PROPERTY FROM ANY PLACE IN THE UNITED STATES TO AN ADJACENT FOREIGN COUNTRY.

The transportation of passengers or any property as described in *Paragraph B, ante*, from any place in the United States to an adjacent foreign country is subject to the provisions of the Act to Regulate Commerce.

The word "adjacent" as used in the Act to modify the words "foreign country," would seem to mean adjacent in the sense of the possibility of substantial continuity of rails.⁴⁰

Indeed, as was pointed out in the report to the Senate on the original Act to Regulate Commerce in the year 1886, this meaning is made plain. The report said: "While provisions of the bill are made to apply mainly to the regulation of interstate commerce, in order to regulate such commerce fairly and affectively it has been deemed necessary to extend its application also to certain classes of foreign commerce which are intimately intermingled with interstate commerce, such as shipments between the United States and adjacent countries by railroad."

Under the provisions of the Act, it will be noted it is not necessary that transportation destined to an adjacent foreign country be transported over more than one State in passing

³⁹ Re Investigations of Acts of Grand Trunk Ry. Co. (1889), 3 I. C. C. R. 87; 2 I. C. R. 496.

⁴⁰ Lykes S. S. Line v. Com'l Union et al. (1908), 13 I. C. C. R. 310.

into such adjacent foreign country in order for the jurisdiction of the Interstate Commerce Commission to attach.

Whenever the carriage of property originates in the United States and goes to a destination in an adjacent foreign country such carriage is subject to the Act.⁴¹ For example: A movement of passengers or property from Lansing, Mich., to Montreal, Canada, which passes out of the State of Michigan directly into the Dominion of Canada; or one from Columbus, Ohio, destined to Toronto, Canada, which travels via Toledo, O., and the Great Lakes; or one which originates at Dallas, Texas, destined to Monterey, Mexico, and which passes directly out of the State of Texas into Mexico, is subject to the jurisdiction of the Interstate Commerce Commission and to the provisions of the Act to Regulate Commerce.

¶ D. TRANSPORTATION OF PROPERTY FROM ANY PLACE IN UNITED STATES TO A FOREIGN COUNTRY (NOT ADJACENT) AND CARRIED FROM SUCH PLACE TO A PORT OF TRANSSHIPMENT.

Section 1 of the Act to Regulate Commerce states that its provisions shall apply "to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment * * *."

The Interstate Commerce Commission in its control over such foreign commerce is limited to the regulation of such traffic, whether by railroad or by a combination of rail and water carriers to the port of transshipment. For example: A shipment moving from Pittsburg, Pa., to Liverpool, England, via the port of New York is only subject to the jurisdiction of the Interstate Commerce Commission up to the port of New York.

It is not necessary that a shipment destined to a foreign country be transported over more than one State in order for the jurisdiction of the Commission to attach. A consignment of cotton shipped from Dallas, Texas, to Galveston

⁴¹ Re Investigations of Acts of Grand Trunk Ry. Co. (1889), 3 I. C. C. R. 87; 2 I. C. R. 496.

for export is subject to the Act to Regulate Commerce, and the rates on such shipment are subject to Federal regulation, although the movement is wholly within a State. And, likewise, a shipment of machinery from Syracuse, N. Y., to New York City upon through billing to a European point comes under the control of the Federal authority. Traffic transported under a through bill of lading from a point within the United States through a port of transshipment to a point in a foreign country is within the provisions of the Act.⁴² See "*Ocean Carriers*," Section 48, *post*, for further explanation.

¶ E. TRANSPORTATION OF PROPERTY FROM A FOREIGN COUNTRY
(NOT ADJACENT) TO ANY PLACE IN UNITED STATES AND
CARRIED TO SUCH PLACE FROM A PORT OF ENTRY, EITHER
IN UNITED STATES OR AN ADJACENT FOREIGN COUNTRY.

Section 1 of the Act to Regulate Commerce provides that its provisions shall apply "to the transportation in like manner of property shipped from a foreign country to any place in the United States and carried to such place from a port of entry, either in the United States or an adjacent foreign country." As the jurisdiction of the Interstate Commerce Commission is limited to the language of Section 1 of the Act, it will be seen that the jurisdiction over shipments imported into the United States from foreign countries is confined to that portion of the haul from the port of entry, in either the United States or an adjacent foreign country, to the point of destination. Thus, the jurisdiction of the Commission over a shipment of olive oil from Italy to Louisville, Ky., via the port of New Orleans, is limited to the movement from New Orleans to Louisville. A shipment of wine from France to Albany, N. Y., imported via the port of New York, is subject to the provisions of the Act to Regulate Commerce from New York City to Albany, although such movement is confined within one State.

⁴² T. & P. Ry. Co. v. I. C. C., 162 U. S. 197, 16 Sup. Ct. Rep. 666, 40 L. ed. 940.

It is not necessary to the attaching of the jurisdiction of the Commission over import traffic that such shipments pass through more than one State.⁴³

See "*Ocean Carriers*," Section 48, *post*, for further explanation.

¶ F. MESSAGES SENT FROM THE UNITED STATES TO ANY FOREIGN COUNTRY.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) states that its provisions shall apply "to telegraph, telephone and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States * * * to any foreign country."

§ 32. Interstate Railroads.

¶ A. DEFINED.

An interstate railroad as distinguished from an intrastate railroad (that is, one lying wholly within one State) is a road which operates beyond the borders of a single State; a railroad which operates from one State or Territory of the United States, or the District of Columbia to any other State or Territory of the United States, or the District of Columbia. Or, in other words, one which passes from one State over the boundary line of another State of the Union.

A line of railway operating partly in the District of Columbia and partly in the State of Maryland, is subject to the provisions of the Act to Regulate Commerce and to the jurisdiction of the Interstate Commerce Commission.⁴⁴

The Act provides that the term "railroad" as used therein shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether used or

⁴³ Railroad Commission of Georgia v. Clyde S. S. Co. et al. (1892), 4 I. C. R. 120; 5 I. C. C. R. 324.

⁴⁴ Willson v. Rock Creek Railway of Dist. of Col. (1887), 7 I. C. C. R. 83.

operated under a contract, agreement, or lease, and shall include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated therein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property.⁴⁵

The Coal Creek & New River Railroad Co. was a corporation chartered by the State of Tennessee and owned a short road wholly within that State, but never owned any rolling stock or operated its road. The road was used and operated under contract by companies owning interstate roads as a means of conducting interstate traffic in coal. *Held*, That the short road was one of the facilities and instrumentalities of interstate commerce, and as such was subject to the provisions of the Act to Regulate Commerce.⁴⁶

¶ B. STEAM RAILROADS.

The Act to Regulate Commerce makes no distinction as to the classes of railroads which shall be subject to its provisions. That is, no reference is made as to the propelling power used in their operation. Section 1 of the Act simply subjects to the jurisdiction of the Interstate Commerce Commission those common carriers engaged in the transportation of interstate or foreign traffic, wholly by "railroad," or partly by "railroad" and partly by water, etc.⁴⁷ However, as there are but two classes of railroads engaged in commerce at the present time, i. e., steam and electric, these are the ones which are comprehended within the meaning of the term "railroad."

Therefore all steam roads are subject to the provisions of the Act to Regulate Commerce when they are engaged in the transportation of passengers or property as described in the Act.⁴⁸

⁴⁵ Act, Section 1.

⁴⁶ *Heck et al. v. E. T., Va. & Ga. R. Co.* (1888), 1 I. C. R. 775, 1 I. C. C. R. 495.

⁴⁷ Act, Section 1.

⁴⁸ *Ibid.*

¶ C. ELECTRIC RAILWAYS.

As stated above, an interstate electric railway is subject to the jurisdiction of the Interstate Commerce Commission to the same extent as a steam railroad.

An amendment to a tariff provided: "The above rates will only apply on shipments handled by steam power and will not apply when handled by electrical power." *Held*, That the limitation of the rates to shipments handled by steam power is unlawful and must be eliminated from the tariff.⁴⁹

The defendant owned and operated an electric railroad between the City of Washington, D. C., and Chevy Chase Lake in Montgomery County, Maryland. The railroad was used mainly for the conveyance of passengers, but cars containing merchandise were frequently handled. *Held*, That such electric railroad was subject to the provisions of the Act to Regulate Commerce.⁵⁰

The Act makes no distinction between Railroads that are operating by electricity and those that use steam; nor has the Commission thought at any time to make such distinction. Both are subject to the Act when engaged in interstate transportation and are entitled to equal consideration in controversies before the Commission. Moreover, progress in the science of electricity in the rapid increase of new devices for its application have led many practical railroad men to think that we may be measurably near its general use as the chief motive power in transportation.⁵¹

⁴⁹ See Rule 2, Con. Rul. Bul. No. 4 (Nov. 4, 1907).

⁵⁰ *Willson v. Rock Creek Railway of Dist. of Col.* (1887), 7 I. C. C. R. 83.

⁵¹ *C. & M. Elect. R. R. Co. v. Ill. Cent. R. R. Co. et al.*, 13 I. C. C. R. 20. See *West End Improvement Club v. Omaha & Council Bluffs Railway & Bridge Co. et al.* (1909), 17 I. C. C. R. 239. Temporary restraining order granted, *Omaha & C. B. St. Ry. Co. et al. v. I. C. C.* (1910) 179 Fed. Rep. 243.

§ 33. State Railroads Engaged in Interstate Commerce.

¶ A. PRESENT LAW.

The proviso in the first section of the Act to Regulate Commerce, "that the provisions of the Act shall not apply to the transportation of passengers or property or to the receiving, delivering, storage, or handling of property wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid"—that is, by continuous carriage or shipment—only excludes from regulation the purely internal commerce of a State, that which is confined within its limits, which originates and ends in the same State. When a State carrier engages in interstate commerce it becomes a national instrumentality for the purpose of such commerce, and is subject to the regulations prescribed by the national authority. It cannot limit its obligations in that business, but must serve the business offered impartially and without preference or discrimination.

Any carriage of goods which crosses a State line is interstate commerce and the fact that the transportation from one State to another is accomplished in whole or in part through the agency of independent and unrelated carriers up to and from the State line, does not affect the character of the transportation in this respect. For, whenever an article destined to a place without the State is shipped or started therefor, it becomes the subject of interstate commerce, and the carriers employed in the transportation thereof, although neither of them pass from one State to another, are subject as instrumentalities of such commerce, to national legislation and control.⁵³

⁵³ *Ex Parte Koehler*, Rec. (1887), 30 Fed. 867; following *The Daniel Ball* (10 Wall. (U. S.) 557, 19 L. ed. 999), wherein the Court said: "In this case it is admitted that the steamer was engaged in shipping and transporting down Grand River goods destined and marked for other States than Michigan and in receiving and transporting up the river goods brought into the State, and without its limits; but inasmuch as her agency in transportation was entirely within the limits of the State,

A railroad company whose road lies entirely within the limits of a single State becomes subject to the Act to Regulate Commerce by participating in a through movement of traffic from a point in another State to a point in the State within which it is located, although its own service is performed entirely within the latter State.⁵⁴ And of course the same is true of a State road which becomes one of the members to a through route on a shipment from a point in another State, which passes through the State in which the road lies.

A connecting railroad carrier over whose line an interstate shipment passes is engaged in interstate commerce with and she did not run in connection with, or in continuation of, any lines of vessels or railways leading to other States, it is contended that she was engaged entirely in domestic commerce. But this conclusion does not follow. So far as she was employed in transporting goods destined for other States, or goods brought from without the limits of Michigan, and destined to places within that State, she was engaged in commerce between the States; and, however limited that commerce may have been, she was, so far as it went, subject to the legislation of Congress. She was employed as an instrument of that commerce; for, whenever a commodity has begun to move as an article of trade from one State to another, commerce in that commodity between the States has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting entirely in one State and some acting through two or more States, does in no respect affect the character of the transaction. To the extent in which each agency acts in that transportation it is subject to the regulation of Congress."

The doctrine of *The Daniel Ball* has been repeatedly recognized and approved in later decisions of the Supreme Court. See *Coe v. Errol*, 116 U. S. 517; 29 L. ed. 715, 6 Sup. Ct. Rep. 475; *Wabash, etc., Ry. v. Illinois*, 118 U. S. 557; 30 L. ed. 244, 7 Sup. Ct. Rep. 4; *Kidd v. Pearson*, 128 U. S. 1; 32 L. ed. 346, 9 Sup. Ct. Rep. 6; *Louisville, etc., Ry. Co. v. Mississippi*, 133 U. S. 587; 33 L. ed. 784, 10 Sup. Ct. Rep. 348; *Norfolk, etc., R. Co. v. Pennsylvania*, 136 U. S. 114; 34 L. ed. 394, 10 Sup. Ct. Rep. 958. See also *Hood & Sons v. D. L. & W. Rd. Co.* (1909), 17 I. C. C. R. 15.

⁵⁴ *Baer Bros. Merc. Co. v. Mo. Pac. Ry.* (1908), 13 I. C. C. R. 329; reaffirmed in *Nollenberger v. M. P. Ry. Co. et al.* (1909), 15 I. C. C. R. 595.

respect to such shipment and subject to the law regulating the same, although its line may lie wholly within one State.⁵⁵

The importation into one State from another is the test of interstate commerce. Every part of every transportation of articles of commerce in a continuous passage from a commencement in one State to a prescribed destination in another is a transaction of interstate commerce. Every carrier who transports such goods through any part of such continuous passage is engaged in interstate commerce, whether the goods are carried upon through bills of lading or are rebilled by the several carriers.⁵⁶

When a corporation engages in interstate commerce, it subjects itself to all the regulative provisions concerning such commerce constitutionally prescribed by Congress.⁵⁷

Where a carrier operating within a State filed and published a joint rate on oil from a point in another State on the line of a connecting carrier to a point on its own line, and out of such rate paid the connecting carrier for its part of the service: *Held*, That the two carriers were operating under a common arrangement for the carriage of the oil in interstate commerce.⁵⁸

Where a carrier filed and published a rate between two points on its line within a State, and also procured copies of the tariff schedules of a terminal line extending to a point in another State and filed and published such schedules in the manner required by law: *Held*, That the carrier thereby became an interstate carrier as to shipments made under such rate.⁵⁹

A railroad not otherwise subject to the Act, subjects itself

⁵⁵ United States v. Standard Oil Co. of Indiana (1907), 155 Fed. Rep. 305.

⁵⁶ Willson v. Rock Creek Railway of Dist. of Col. (1887), 7 I. C. C. R. 83.

⁵⁷ Cassatt et al. v. Mitchell C. & C. Co. (1907), 150 Fed. Rep. 32; 81 C. C. A. 80.

⁵⁸ United States v. Standard Oil Co. of Indiana (1907), 155 Fed. Rep. 305.

⁵⁹ *Ibid*.

to the jurisdiction of the Commission and the provisions of the Act, if it transports *express matter* for an *express company* that is subject to the Act.⁶⁰

The above is the present law governing the jurisdiction of the Interstate Commerce Commission over State railroads engaged in interstate commerce. However, prior to the Hepburn amendment of June 29, 1906, which changed the punctuation of Section 1 of the Act, the law was different, and State railroads were not subject to the provisions of the Act to Regulate Commerce, unless they were operating in connection with some other carrier under a common control, management, or arrangement for a continuous carriage or shipment of interstate commerce. Under the present Act the test of jurisdiction is not the arrangement under which the freight is handled, but rather the character of the transportation itself. The plain language of the Act subjects any carrier which engages in the movement of traffic by rail from a point in one State to a point in another State to its provisions.⁶¹

For a detailed explanation as to the change in the law and for decisions under the old law see "*Common Control, Management, or Arrangement for a Continuous Carriage or Shipment*," Paragraph B, *infra*.

¶ B. COMMON CONTROL, MANAGEMENT, OR ARRANGEMENT FOR A CONTINUOUS CARRIAGE OR SHIPMENT.

By its terms, the provisions of the original Act applied to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment." The decisions and intimations of the Federal Courts, including the Supreme Court of the United States, were generally to the effect that the words "under a common control, management,

⁶⁰ Rule 197, Con. Rul. Bul. No. 4 (June 21, 1909).

⁶¹ *Leonard v. K. C. S. Ry. Co. et al.* (1908), 13 I. C. C. R. 573.

or arrangement," applied to a route composed wholly by railroads, as well as by one which was partly by railroad and partly by water. See *Paragraph C, infra*, for the syllabi of the most important decisions by the Federal Courts and the Interstate Commerce Commission under the old law.

The significance of this holding is obvious. The railroad located wholly within a State does not transport passengers upon its own line from a point in one State to a point in another. It was not, therefore, subject to the provisions of the Act to Regulate Commerce, unless by common ownership or control or by some arrangement it became part of a line which did handle traffic between the States. Whether a State railroad was subject to the Act depended upon whether it had entered into such arrangement with other railroads, and since the making of the arrangement was a voluntary act upon the part of the State railroad, that railroad could exercise its election to be or not to be subject to Federal jurisdiction. Otherwise stated, the jurisdiction of the Interstate Commerce Commission was not determined by the character of the transportation in which the State railroad engaged, but by the nature of the arrangement under which that business was handled. As changed by the Hepburn amendment of June 29, 1906, the provisions of the Act now apply to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment) from one State or Territory of the United States, etc." The words "common control, management, or arrangement" now plainly apply only to transportation which is partly by railroad and partly by water. With respect, therefore, to transportation entirely by rail the words in parentheses may be eliminated from the statute. The terms of the Act now apply to "any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad from one State or Territory in the United States, or the

District of Columbia, to any other State or Territory of the United States, or the District of Columbia." Under the present Act the test of jurisdiction is not the arrangement under which the freight is handled, but rather the character of the transportation itself. The plain language of the Act subjects any carrier which engages in the movement of freight by rail from a point in one State to a point in another State to its provisions.⁶²

¶ C. SYLLABI OF SOME OF THE MOST IMPORTANT CASES AFFECTING STATE RAILROADS DECIDED BY THE FEDERAL COURTS AND THE COMMISSION UNDER THE OLD LAW PRIOR TO JUNE 29, 1906.

"The phrase, 'common control, management, or arrangement for a continuous carriage or shipment,' in the first section of the Act to Regulate Commerce was intended to cover all interstate traffic carried through or over all rail or part water and part rail lines. The receipt successively by two or more carriers for transportation of traffic shipped under through bills of lading for continuous carriage over their lines is assent to a common arrangement for such continuous carriage or shipment, and previous formal agreement between them is not necessary to bring such transportation under the terms of the law."⁶³

The United States Supreme Court decided in *C. N. O. & T. P. Ry. Co. v. I. C. C.*⁶⁴ that "when a railroad company enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading and to participate in through rates and charges, it thereby becomes part of a continuous line, not made by the consolidation with the foreign company, but made by an arrangement for a continuous carriage or shipment to another, and thus becomes amenable to the Federal Act, in respect to such inter-

⁶² Leonard v. K. C. S. R. Co. (1908), 13 I. C. C. R. 573.

⁶³ Railroad Commission of Georgia v. Clyde S. S. Co. et al. (1892), 4 I. C. R. 120; 5 I. C. C. R. 324.

⁶⁴ C., N. O. & T. P. Ry. Co. v. I. C. C. (1896), 162 U. S. 184; 40 L. ed. 935; 5 I. C. R. 391; 16 Sup. Ct. Rep. 700, so-called "Social Circle" case.

state commerce. A State railroad company which has elected to enter into the carriage of interstate freights, and thus subject itself to the control of the Interstate Commerce Commission, cannot limit that control in respect to foreign traffic to certain points on its road, and exclude other points."

"When goods are shipped under a through bill of lading, from a point in one State to a point in another, and when such goods are received in transit by a State common carrier, under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment, within the meaning of the Act to Regulate Commerce."

And citing *C., N. O. & T. P. Ry. Co. v. I. C. C.*, *supra*,⁶⁵ it was decided in the case of the *United States, ex rel. Interstate Commerce Commission v. Seaboard Ry. Co.*,⁶⁶ "that the shipment of freight over a number of lines of railroad from a point in one State to a point in another, under an agreement, express or implied, for a conventional division of the charges among the different roads, constitutes a common agreement for a continuous carriage or shipment, within the meaning of the Interstate Commerce Act, and a road participating in such agreement is subject to the provisions of the Act, though its line lies entirely within one State, and its part of the joint charge is its regular local rate."

A railroad company whose line is wholly within a single State, and which, although it carries freight destined to points beyond such State, never issues bills of lading to points beyond its own line, receives no freight on through bills of lading, and has no arrangement with other roads for a conventional division of charges, or for a common control or arrangement, is not within the purview of the Interstate Commerce Act, or of the Supplement Act of August 7, 1888.⁶⁷

A State common carrier which accepts and transports in-

⁶⁵ *C., N. O. & T. P. Ry. Co. v. I. C. C.* (1896), 162 U. S. 184; 40 L. ed. 935; 5 I. C. R. 391; 16 Sup. Ct. Rep. 700, so-called "Social Circle" case.

⁶⁶ *I. C. C. v. S. A. L. Ry. Co.*, 32 Fed. Rep. 563 (1897).

⁶⁷ *I. C. C. v. Bellaire, Z. & C. Ry. Co.* (1897), 77 Fed. Rep. 942.

terstate traffic under through bills of lading will be held to have subjected its line to a common control, management or arrangement for a continuous carriage or shipment within the meaning of the Act, although such carrier charges its full local rates for the service performed by it.⁶⁸

Where a State common carrier accepts interstate freight under a through rate and bill of lading, it thereby subjects itself to the provisions of the Act to Regulate Commerce.⁶⁹

The receipt, forwarding and delivery of interstate traffic by connecting carriers was held to establish the existence of a common arrangement between the carriers for a continuous carriage or shipment.⁷⁰

Although goods shipped over several lines from one State to another were not forwarded under through bills of lading, the controlling carrier accepted for its charges a proportion of a through rate from point of origin to destination. *Held*, That the controlling carrier thereby subjected its line to a common control or arrangement within the meaning of section 1 of the Act, although its line was wholly in one State and the proportion of the through rate was its regular local rate.⁷¹

So far as a railroad company, whose line is entirely within one State, issues bills of lading over its connecting lines to points in other States, and makes through rates, it falls under the provisions of the Interstate Commerce Act.⁷²

Railroads which share in an agreed rate on traffic to a certain point, and in a precisely equal rate on traffic to an intermediate point, although on traffic to this point there is added an amount equal to the local rate from that point to the end of the longer haul, which additional exaction is received by the local road alone, are to be regarded as con-

⁶⁸ L. & N. Rd. Co. v. Behlmer (1900), 175 U. S. 648; 20 Sup. Ct. Rep. 209; 44 L. ed. 309.

⁶⁹ T. & P. Ry. Co. v. Clarke (1893), 4 Tex. Civ. App. 611; 23 S. W. 698.

⁷⁰ Phelps & Co. v. T. & P. Ry. Co. (1893), 6 I. C. R. 36, 4 I. C. C. R., 363.

⁷¹ United States v. Seaboard Ry. Co. (1897), 82 Fed. Rep. 563.

⁷² Re Annapolis W. & B. R. R. Co. et al. (1887), 1 I. C. R. 315.

stituting a continuous line, subject to the Act to Regulate Commerce.⁷³

Where a railway company whose road is wholly within the bounds of a single State voluntarily engages as a common carrier in interstate commerce, by making an arrangement for a continuous carriage or shipment of goods or merchandise, it is subject, so far as such traffic is concerned, to the regulations and provisions of the Act to Regulate Commerce.⁷⁴

The fact that a railroad lies wholly within one State does not exempt it from the obligations imposed by the Interstate Commerce Act, if the transportation over it is part of a shipment from one State to another, or to or from a foreign country. The A. railway connected at T. with the C. railway and the W. railway. Both the A. and the C. railways were engaged in interstate commerce, reaching by their own lines and connections the same regions. By the W. railway they both made connection with other important railways, and with routes of water transportation. For a considerable time the W. railway charged the same rate for transportation over its line of freight received or destined to either of the other railways, but it later withdrew these rates as to the A. railway, and thereafter charged for transportation, over its line, of freight received from or destined to the A. railway, the full local rate of freight allowed by statute, which was considerably higher than the rate previously charged to both railways and still charged to the C. railway. There had been no change of condition, and the service rendered to both railways continued to be substantially the same. *Held*, That the charge of such increased rate was an unlawful discrimination, not justified because the rate charged was the statutory local rate, and the transportation over the W. railway was wholly within the State, nor by the fact that the A. railway was a small and weak

⁷³ L. & N. Rd. Co. v. Behlmer (1900), 175 U. S. 648; 20 Sup. Ct. Rep 209; 44 L. ed. 309.

⁷⁴ Pa. Millers' State Association v. P. & R. R. R. Co. et al. (1900), 9 I. C. C. R. 549.

road, whose business was unimportant as compared with that of the C. railway, or that there was no direct connection between the tracks of the A. and W. roads, the tracks of the C. railway being used for switching, it not appearing that the C. railway objected to the use of its tracks; and, according, that the W. railway should be enjoined from exacting more from the A. railway than from the C. railway for similar services.⁷⁵

§ 34. State Telegraph and Telephone Companies Engaged in the Transmission of Interstate Messages.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) makes its provisions applicable to telegraph and telephone companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States to any other State, Territory, or District of the United States, or to any foreign country.

A construction of this provision based on the reasoning as outlined under "*State Railroads Engaged in Interstate Commerce*," *Section 33, ante*, leaves no doubt as to the jurisdiction of the Commission over State telegraph and telephone companies engaged in the transmission of interstate messages.

§ 35. Express Companies.

The original Act to Regulate Commerce, approved February 4, 1887, made no mention about express companies, and the Interstate Commerce Commission ruled, soon after its organization, that independent express companies were not subject to the Act.⁷⁶

The jurisdiction of the Interstate Commerce Commission is strictly statutory, and cannot be extended by implication over other subjects than those which the Act defined. It therefore followed that, as express companies were not enumerated among the common carriers declared to be subject to the provisions of the Act, as originally enacted, the Interstate

⁷⁵ *Augusta & S. R. Co. v. Wrightsville & T. R. Co.* (1896), 74 Fed. Rep. 523.

⁷⁶ *Re Express Companies* (1887), 1 I. C. R. 677, 1 I. C. C. R. 349.

Commerce had no jurisdiction over them. This ruling was adopted by the United States Circuit Court of Missouri in the case of the *United States v. Morsman*,⁷⁷ in which it was decided that express companies, independently organized as corporations for the transaction of the express business on their own account, were not subject to the provisions of the Interstate Commerce Act.

Of course, express companies performing a common carrier business were subject to all the duties and liabilities imposed by the common law, the laws of the United States and of the several States, but they were not subject to the jurisdiction of the Interstate Commerce Commission prior to June 29, 1906. By the provision of the Hepburn Act of June 29, 1906, amendatory of the Interstate Commerce Act, that "the term 'common carrier' as used in this Act shall include express companies," such companies are made subject to all the provisions of said Interstate Commerce Act and its amendments, so far as the same may be applicable, to the same extent as though they had been named in the original Act.⁷⁸

§ 36. Sleeping Car Companies.

Prior to the Hepburn amendment of June 29, 1906, to the Act to Regulate Commerce, sleeping-car companies were not subject to the provisions of the Act nor to the jurisdiction of the Interstate Commerce Commission, but that amendment included such companies within the category of "common carrier," as provided by Section 1 of the Act. As to the jurisdiction of the Interstate Commerce Commission prior to June 29, 1906, the remarks under the section on "*Express Companies*," Section 35, *ante*, are equally applicable to sleeping-car companies.

§ 37. Telegraph Companies.

The Amendment of June 18, 1910, to the Act to Regulate

⁷⁷ *United States v. Morsman*, 42 Fed. Rep. 448; see also *Southern Indiana Exp. Co. v. United States Exp. Co.*, 92 Fed. Rep. 1022, 35 C. C. A. 172, affirming 88 Fed. Rep. 659.

⁷⁸ *United States v. Wells-Fargo Express Co.* (1908), 161 Fed. Rep. 606.

Commerce makes its provisions applicable to telegraph companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose and the Act.

Prior to the above named date, telegraph companies were not subject to the jurisdiction of the Interstate Commerce Commission.

§ 38. Telephone Companies.

The Amendment of June 18, 1910, to the Act to Regulate Commerce, makes its provisions applicable to telephone companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of the Act.

Prior to the above named date, telephone companies were not subject to the jurisdiction of the Interstate Commerce Commission.

§ 39. Cable Companies.

The Amendment of June 18, 1910, to the Act to Regulate Commerce, makes its provisions applicable to cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of the Act.

Prior to the above named date, cable companies were not subject to the jurisdiction of the Interstate Commerce Commission.

§ 40. Fast Freight Lines.

Where a fast freight line operates over the roads of several connecting carriers, and the earnings and expenses of
REGULATION—7.

the line are divided among the carriers, in agreed proportions, such carriers must see to it that the line's tariffs are filed with the Interstate Commerce Commission, and that its rates are made to conform to the law.⁷⁹

§ 41. Terminal and Belt Railroads Handling Interstate Traffic.

A terminal or belt railroad, whose line is in and around a city, and entirely within one State, which receives interstate freight for shipment from or delivery to points on its line on through bills of lading issued by other companies on which line the shipment begins or ends, submits its road to a common control for a continuous shipment, within Section 1 of the Interstate Commerce Act, and is subject to the provisions of such Act.⁸⁰

The question is asked, "Is a belt line owned by a municipality, which participates in interstate movements, subject to the jurisdiction of the Act and of the Commission?" *Held*, That it is subject to such jurisdiction.⁸¹

In case of *United States v. Illinois Terminal Rd. Co.*,⁸² the Court said: "The railroad line of the defendant here is entirely situated within the State of Illinois. It is not more than sixteen miles in length. It is really no more than a switching road connecting the various railways reaching East St. Louis and Alton, Illinois, with each other, and with various industries which have been established upon its rails. From the indictment and the plea thereto it appears, however, that this defendant is engaged in the transportation of property moving wholly by railroad from one State to another State. It is, therefore, as much subject to the Act as though it owned and operated all the line of rail-

⁷⁹ Vermont State Grange, etc., v. B. & L. Rd. Co. et al. (1887), 1 I. C. R. 500; 1 I. C. C. R. 158.

⁸⁰ Interstate Stock Yards Co. v. Indpls. Union Ry. Co. et al. (1900), 99 Fed. Rep. 472.

⁸¹ Rule 89, Con. Rul. Bul. No. 4 (June 29, 1908).

⁸² U. S. v. Illinois Terminal R. Co. (1909), 168 Fed. Rep. 546.

road connecting the points in different States between which moved the commodities mentioned in the indictment.”

§ 42. Foreign Railroads.

The provisions of the Act to Regulate Commerce apply to foreign, as well as domestic carriers, engaged in the transportation of passengers or property, for a continuous carriage or shipment, from a place in the United States to a place in an adjacent foreign country over that portion of the haul within the United States. The common carriers engaged in such transportation are subject to the provisions of the Act in respect to the printing of schedules of rates, fares, charges, for the traffic they carry, the posting and filing with the Interstate Commerce Commission of such schedules, the notices of advances and reductions, and the maintenance of the rates, fares and charges established and published and in force at the time. Such common carriers are also subject to the provisions of the Act in respect to joint tariffs or rates, fares and charges for continuous lines or routes. The carriage of freights cannot be prevented from being treated as one continuous carriage from the place of shipment to the place of destination by any means or devices intended to evade any of the provisions of the Act. The law imposes no obstructions to transportation by foreign carriers from or into the United States, but requires such carriers, in conducting their business, to conform to the same regulations that govern domestic carriers.⁸³

Where a foreign railroad corporation comes into the United States to compete for traffic as against American lines, it should be content to operate upon the same terms with its American competitors.⁸⁴

§ 43. Bridges and Bridge Companies.

Section 1 of the Act to Regulate Commerce provides that

⁸³ Re Investigation of Acts and Doings of the Grand Trunk Railway System (1889), 2 I. C. R. 496, 3 I. C. C. R. 87.

⁸⁴ Re Alleged Disturbances in Passenger Rates by Canadian Pacific Railway Co. (1898), 8 I. C. R. 71.



“the term ‘railroad’ shall include all bridges * * * used or operated in connection with any railroad, * * * whether owned or operated under a contract, agreement or lease.”

Bridges are declared to be included within the term “railroad” by the Act, not for the purpose of exempting them from any liability to publish and observe their rates when such bridges are operated by their owners as common carriers, but rather to make certain that, where these agencies are employed by railroads, the transportation service rendered by them shall still be subject to the provisions of the Act to Regulate Commerce.⁸⁵

It often happens that bridges are constructed and provided by independent companies, which lease them to railroad companies under certain conditions.

The intent of Section 1 was to insure that the carriage of freight and of passengers should be subject to the Act from its inception to its conclusion, and that the jurisdiction of the government over such transportation should not be divested by the fact that any agency used in the transportation was furnished by some party other than the common carrier itself.⁸⁶

A railroad may, without doubt, provide by contract with an independent company for the construction of a bridge to be used as a part of its line. It can perhaps extend its contract to the operator of the bridge by its owner when constructed, but in such case the bridge company is not a common carrier. The railroad is the carrier, and answerable to the law as such. The bridge is really a part of the railroad itself, as much as though owned by it.⁸⁷

Where a railway company, by contract with a bridge company, acquires the right to use a bridge with its approaches for the engines, cars and trains of the railway company, the first section of the “Act to Regulate Commerce” regards the

⁸⁵ See discussion under *Enterprise Transportation Co. v. Penna. Rd. Co. et al.* (1907), 12 I. C. C. R. 327.

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

railway company as the owner or operator of the bridges and approaches, for the time being, as to all traffic transported by the railway company over the bridge; and as to all such traffic the railway company, and not the bridge company, must be regarded as the common carrier.⁸⁸

Should a bridge company, which owns and maintains a bridge connecting two States, operate regular trains over such bridge for the transportation of passengers and property for hire between such States, it would be subject to the jurisdiction of the Interstate Commerce Commission. It being a common carrier engaged in the transportation of passengers and property by railroad between two States, as described by Section 1 of the Act, such bridge company would come within the purview of the Act.⁸⁹

For full discussion as to when bridge companies are not subject to the provisions of the Act to Regulate Commerce, see "*Bridges and Bridge Companies*," Section 59, *post*.

§ 44. Ferries and Ferry Companies.

It will be noted, by reference to Section 1 of the Act to Regulate Commerce, that its provisions only apply to water carriers when they are engaged in the transportation of passengers or property in connection with a railroad under a common control, management or arrangement for a continuous carriage or shipment. A ferry line being a water carrier, it would not be subject to the provisions of the Act, and would rest under no obligation to publish or observe its tariff rates, whether its transportation were State or interstate, until it entered into some arrangement with a rail carrier for the interstate transportation of passengers or of property. By that Act, however, it would become subject to the jurisdiction of the Interstate Commerce Commission.⁹⁰

Section 1 of the Act, however, provides that the term

⁸⁸ Ky. & Ind. Bridge Co. v. L. & N. Rd. Co. (1889), 37 Fed. Rep. 567, 2 L. R. A. 289.

⁸⁹ See note 85, *supra*.

⁹⁰ Enterprise Transportation Co. v. Penna. Rd. Co. et al. (1907), 12 I. C. C. R. 327.

“‘railroad’ shall include all * * * ferries * * * used or operated in connection with any railroad, * * * whether owned or operated under a contract, agreement or lease.” However, in this case, the ferry would practically become a part of the railroad, and would lose its identity as a separate common carrier. The intent of this provision was to insure that the carriage of freight and of passengers should be subject to the Act from its inception to its conclusion, and that the jurisdiction of the Commission over such transportation should not be divested by the fact that any agency used in the transportation was furnished by some party other than the railroad itself.⁹¹

The city of New York operates a municipal ferry between St. George and the foot of Whitehall street. The Staten Island Rapid Transit Co. sells commutation tickets from Perth Amboy to the Whitehall street pier, and files a tariff of local and joint passenger fares to cover such transportation. Upon inquiry from the commissioner of docks the Commission held, That the municipality must join in the tariffs.⁹²

See “*Ferries and Ferry Companies*,” Section 60, *post*. See, also, “*Inland Water Carriers*,” Section 47, *post*.

§ 45. Pipe Lines.

Section 1 of the Act to Regulate Commerce subjects the following common carriers by pipe line⁹³ to its provisions.

Any corporation or any person or persons engaged in the

⁹¹ Enterprise Transportation Co. v. Penna. Rd. Co. et al. (1907), 12 I. C. C. R. 327.

⁹² Rule 162, Con. Rul. Bul. No. 4 (April 12, 1909).

⁹³ A pipe line is a connected series of pipes for the transportation of oil, gas, or water. (Bouvier's Law Dict.) A line of pipes running upon or in the earth carrying with it the right to the use of the soil in which it is placed. (Dietz v. Mission Transfer Co., 95 Cal. 92, 30 Pac. 380.) A pipe line company for conveying oils is a common carrier bound to receive and transport for all persons alike, all goods intrusted to its care, and is not in any sense, or at any time, an agent for the person committing oil to its care. (Giffin v. South West Penn. Pipe Lines, 172 Pa. 580, 33 Atl. 578; see also Columbia Conduit Co. v. Com., 90 Pa. 307.)

transportation of oil or other commodity, except water, and except natural and artificial gas:

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| <p>(a) By pipe lines.</p> <p>(b) Partly by pipe lines and partly by railroad.</p> <p>(c) Partly by pipe lines and partly by water.</p> | } | <p>Who shall be considered and held to be common carriers within the meaning and purpose of the Act to Regulate Commerce.</p> |
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As follows:

From one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States, through a foreign country, to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country, and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.⁹⁴

§ 46. Private Car Companies.

The constitutional power of Congress to regulate commerce among the several States includes the power to regulate freight rates by requiring that they shall be uniform to all shippers, and, in construing statutes enacted to that end, freight rates should be construed to mean the net cost to the shipper of the transportation of his property, and such regulation may lawfully apply, not only to common carriers, but to all persons and corporations occupying such relations to transportation that the conduct of their business may operate to impair uniformity of rates.

A private car company which delivers its cars to railroad companies to be furnished indiscriminately for the use of shippers, receiving pay for such use from the railroad com-

⁹⁴ See note 2, *supra*.

panies on a mileage basis, is within the provisions of Section 1 of the Elkins Act, making it unlawful for any person "or corporation to offer, grant, give, or solicit, or accept, or receive any rebate, concession, discrimination in receipt of the transportation of any property in interstate or foreign commerce by any common carrier, * * * whereby any such property shall, by any device whatever, be transported at a less rate than that named in the tariff published and filed by such carriers, whereby any other advantage is given or discrimination is practiced," and the giving by such a car company of any rebate or allowance to a shipper using its cars, whereby he secures the transportation of his property at a less rate than that named in the published tariff of the carrier for transportation of such property in its own cars, although from its own funds, and without the connivance or knowledge of the carrier, is a violation of the statutes. Such a car company is, therefore, subject to the jurisdiction of the Interstate Commerce Commission, charged with the duty of enforcing the statute, and having the power to inquire into the operations of any agency of transportation which may so conduct its business as to destroy uniformity of rates.⁹⁵

Section 1 of the Act to Regulate Commerce (as amended) states that "the term 'transportation' shall include cars and other vehicles, and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for use thereof, and all services in connection with the receipt, delivery, elevation and transfer in transit, ventilation, refrigeration or icing, storage and handling of property transported."⁹⁶

§ 47. Inland Water Carriers.

Section 1 of the Act to Regulate Commerce provides that the provisions of the Act shall apply "to any common carrier or carriers engaged in the transportation of passengers or property * * * partly by railroad and partly by water,

⁹⁵ I. C. C. v. Reichman, 145 Fed. Rep. 235.

⁹⁶ See note 2, supra.

when both are used under a common control, management or arrangement for a continuous carriage or shipment from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country, and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country.”

Under the plain terms of the Act, its provisions do not include or apply to water craft unless in connection with a railroad “under a common control, management or arrangement for a continuous carriage or shipment,” as provided in Section 1 thereof.⁹⁷

When a carrier by water unites with one or more other carriers by rail in making a rate for interstate or foreign shipments, and issues a through bill of lading therefor, it is subject to the Interstate Commerce Act. An express agreement for the through rate is not required, but the successive receipt and forwarding in the ordinary course of business by two or more carriers under through bills of lading, or any arrangement for a continuous carriage, constitutes assent to such common arrangement, and makes the water carrier a party to the contract within the meaning of the Act.⁹⁸

By reference to Section 1 of the Act, as quoted above, it will be seen that it embraces carriers “engaged in the transportation of passengers or property * * * partly by rail-

⁹⁷ *Gulf C. & S. F. Ry. Co. v. Texas* (1907), 204 U. S. 403; 51 L. ed. 540, 27 Sup. Ct. Rep. 360, affirming 97 Texas, 274, 78 S. W. 495, citing *Coe v. Errol*, 116 U. S. 517; 29 L. ed. 715; 6 Sup. Ct. Rep. 475.

⁹⁸ *United States v. Wood et al.* (1906), 145 Fed. Rep. 405; see also *R. R. Com. v. S. F. & W. R. Co.*, 5 I. C. C. R. 13; 3 I. C. R. 414.

road and partly by water when both are used under a common control, management or arrangement for a continuous carriage or shipment," in interstate or international commerce. It does not embrace the carriers wholly by water, though they may also be engaged in like commerce, and as such be rivals of the carriers which it undertakes to control. Thus, the steamers, boats and other water craft plying on the Great Lakes, rivers, canals, in the harbors and on other inland bodies of water of the United States, when operated independent of any railroad and not engaged in the transportation of passengers or property in connection with any railroad under a common control, management or arrangement for a continuous carriage or shipment, are not subject to the provisions of the Act to Regulate Commerce or to the jurisdiction of the Interstate Commerce Commission. For example: The lake carrier which transports freight from Duluth, Minn., to Chicago, Ill., on the Great Lakes, or the river carrier from Memphis, Tenn., to New Orleans, La., is not amenable to the Act.

Indeed, it may be said that the primary purpose of the law, judging from the reports and debates of Congress prior to and succeeding the enactment of the Act of 1887, was to regulate rail carriers; but for the purpose of successful regulation of these it was found necessary that water carriers operating in connection with rail carriers should be made subject to the same regulative power. For the omission of Congress to include independent water craft within the Act, many reasons may be suggested, but perhaps the most influential were that the evils of corporate management had not been so obvious in the case of carriers by water as in that of carriers by land, and, moreover, the rates of transportation by water were so low that they were seldom complained of as a grievance, even when they were unequal and unjustly discriminating.

Summarizing the above, the cases in which the Interstate Commerce Commission has jurisdiction over inland water carriers are as follows:

When operated in connection with a railroad under a common control, management, or arrangement for a continuous carriage or shipment:

(a) From one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia.

(b) From one place in a Territory to another place in the same Territory.

(c) From any place in the United States to an adjacent foreign country.

(d) From any place in the United States through a foreign country to any other place in the United States.

(e) From any place in the United States to a foreign country and carried from such place to a port of transshipment.

(f) From a foreign country to any place in the United States and carried to such place from a port of entry, either in the United States or an adjacent foreign country.

Carriers of interstate commerce by water are subject to the Act to Regulate Commerce only in respect to the traffic transported under a common control, management, or arrangement with the rail carriers, and in respect of traffic not so transported they are exempt from its provisions.⁹⁹

For further explanation as to when inland water carriers are and are not subject to the jurisdiction of the Interstate Commerce Commission and to the provisions of the Act to Regulate Commerce, see "*Water Carriers*," *Section 57, post*.

§ 48. Ocean Carriers.

The Act to Regulate Commerce provides in Section 1 thereof, that its provisions shall apply "to any common carrier or carriers engaged in the transportation of passengers or property * * * partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or ship-

⁹⁹ In the Matter of Jurisdiction over Water Carriers, 15 I. C. C. R. 205.

ment, from one State or Territory of the United States, or the District of Columbia, or to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry, either in the United States or an adjacent foreign country."

From a careful reading of the above section of the statute, inartificially drawn as it is, the legislative intention is deduced to bestow upon the Interstate Commerce Commission jurisdiction over such ocean carriers only as may form a connecting link in the through transportation of passengers or property, internal to the United States, to an adjacent foreign country, or to and from ports of transshipment and entry either in the United States or an adjacent foreign country on foreign commerce, when operated in connection with a railroad under a common control, management, or arrangement for a continuous carriage or shipment.

The word "adjacent," as used in the Act to modify the words "foreign country," would seem to mean adjacent in the sense of the possibility of substantial continuity of rails.¹⁰⁰

The jurisdiction of the Interstate Commerce Commission is not to be determined by anything other than the language of Section 1 of the Act, and in this section is found a clear distinction drawn between interstate commerce and foreign commerce to a country not adjacent to the United States; and this distinction saves such foreign commerce from the effect of that section as to continuous carriage

¹⁰⁰ Lykes S. S. Line v. Com'l Union et al. (1908), 13 I. C. C. R. 310.

beyond the American seaboard. Thus, the Commission has no jurisdiction over the ocean carriers transporting shipments from the United States to a foreign country not adjacent to the United States. By the plain terms of the Act, the Commission in its control over foreign commerce to and from a country not adjacent to the United States, is limited to the regulation of such traffic from the point of origin to the port of transshipment, or from the port of entry to the point of destination. An inland movement of either export or import traffic is a condition precedent to the attaching of the jurisdiction of the Commission, and then only over such inland portion of the haul. The Act provides no machinery by which its provisions can be enforced as to oceanic steamship lines.¹⁰¹

The port-to-port business of water carriers is not within the purview of the statute. It controls all-rail and part-rail and part-water transportation, which is the subject of "common arrangement" and leaves all other water carriage open to free competition.¹⁰²

The Act to Regulate Commerce does not, therefore, apply to an ocean carrier transporting goods from one State or Territory of the United States, or the District of Columbia, to another State or Territory of the United States, or the District of Columbia, unless used in connection with a rail line "under common control, management, or arrangement for continuous carriage or shipment." For example: An ocean steamer plying between Portland, Ore., and San Francisco, Cal., or Seattle and San Francisco, or one engaged in hauling freight to New York City from New Orleans, which originates at that point is not subject to the jurisdiction of the Commission.

Summarizing the above, the cases in which the Interstate

¹⁰¹ *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al.* (1908), 13 I. C. C. R. 207; see also *Kemble v. B. & A. Rd. Co. et al.* (1899), 8 I. C. C. R. 110.

¹⁰² In the *Matter of Jurisdiction over Water Carriers* (1909), 15 I. C. C. R. 205.

Commerce Commission has jurisdiction over ocean carriers are as follows:

When operated in connection with a railroad under a common control, management, or arrangement for a continuous carriage or shipment:

(a) From a port of the United States to another port of the United States when engaged in the handling of property from one State or Territory of the United States, or the District of Columbia to another State or Territory of the United States, or the District of Columbia.

(b) When engaged in handling property from any place in the United States to an adjacent foreign country.

(c) When engaged in the handling of property from any place in the United States through a foreign country to any other place in the United States.

(d) To a port of transshipment when engaged in the handling of property from any place in the United States to a foreign country.

(e) From a port of entry either in the United States or an adjacent foreign country when engaged in the handling of property from a foreign country to any place in the United States.

Carriers of interstate commerce by water are subject to the Act to Regulate Commerce only in respect to the traffic transported under a common control, management, or arrangement with the rail carriers, and in respect of traffic not so transported they are exempt from its provisions.¹⁰³

For further explanation as to when ocean carriers are and are not subject to the jurisdiction of the Interstate Commerce Commission and to the provisions of the Act to Regulate Commerce, see "*Water Carriers*," *Section 57, post*.

§ 49. Intraterritorial Common Carriers.

Section 1 of the Act to Regulate Commerce provides that it shall apply to "any common carrier or carriers of pas-

¹⁰³ In the matter of Jurisdiction over Water Carriers, 15 I. C. C. R. 205.

sengers or property, wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment * * * from one place in a Territory to any other place in the same Territory."

The Interstate Commerce Act applies to shipments to and from points in an unorganized Territory.¹⁰⁴

It will be noted, therefore, that the Interstate Commerce Commission has jurisdiction over common carriers, as described by the Act, which operate wholly within the bounds of a Territory.

For full explanation as to the source of the power of Congress to control such common carriers see "*Intraterritorial Transportation*," Section 29, *ante*.

§ 50. Street Railways within the District of Columbia.

Electric street railways operating within the District of Columbia are subject to the jurisdiction of the Interstate Commerce Commission.¹⁰⁵

See "*Transportation within District of Columbia*," Section 30, *ante*, for explanation as to source of the power of Congress to control such common carriers.

§ 51. Receivers and Trustees of Common Carriers.

The text of the statute¹⁰⁶ recognizes two classes of common carriers, namely, natural persons and corporations;¹⁰⁷ it seems to contemplate receivers of railroads as persons in charge of the affairs of such roads, without reference to their official relation to the court appointing them.¹⁰⁸ By Section 9 of the Act suits upon claims for damages by a common carrier may be brought "in any District or Cir-

¹⁰⁴ M. K. & T. Ry. Co. v. Bowles (1897), 1 Ind. Terr. 250; 30 S. W. 899.

¹⁰⁵ District of Columbia Street Railways Act, approved May 23, 1908. See Appendix for copy of Act.

¹⁰⁶ Act to Regulate Commerce. See Appendix for copy of Act.

¹⁰⁷ Eighth Annual Report of I. C. C. (1895).

¹⁰⁸ Beach on Receivers.

cuit Court of the United States of competent jurisdiction, * * * and such court may compel the receivers, trustees, or agent of the corporation or company defendant in such suit to attend, appear and testify in such case, and compel the production of the books and papers of such corporation or company party to the suit;" Section 9, also, penalizes the failure or refusal on the part of the receiver or trustee of any common carrier to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under Section 6 of the Act; Section 10 makes receivers of property amenable to the penal provisions of the Act; Section 16 subordinates their management to the control of the Commission in the issuance of any order which may be declared lawful by the courts¹⁰⁹ and relates to the penalty for a common carrier or receiver of a common carrier failing or neglecting to obey the orders of the Commission; Section 20 which provides that the Commission may prescribe the form of accounts and examine the same by special examiners, *et cetera*, states that the provision shall apply to receivers of common carriers, and also provides the penalty for common carriers or receivers of common carrier failing or refusing to keep the accounts, *et cetera*, as prescribed by the Commission or to submit same to inspection. Then again, the Elkins Act in Section 1 thereof prescribes the penalty for common carriers and receivers of common carriers convicted of giving a rebate, concession, *et cetera*; and the Arbitration Act in Section 1 thereof,¹¹⁰ enumerates the rights of employes upon railroads that are in the possession and control of receivers appointed by Federal Courts to be heard in such courts upon questions affecting the terms and conditions of their employment; and Section 10 thereof prohibits receivers of railroads from making unjust requirements as conditions to employment and prescribes the penalty for infraction of the law.

The Removal of Causes Act of March 3, 1887, in Section

¹⁰⁹ Eighth Annual Report of I. C. C. (1895).

¹¹⁰ Arbitration Act. See Appendix for copy of Act.

3 thereof, provides, "That the receiver or manager of any property appointed by any court of the United States may be sued with respect of any act or transaction of his in carrying on the business connected with such property, without the previous leave of the court in which such receiver or manager was appointed; but such suit shall be subject to the general equity jurisdiction of the court in which such receiver or manager was appointed so far as the same shall be necessary to the ends of justice."¹¹¹

The sections of the Act to Regulate Commerce enumerated above, taken in connection with this section of the Removal of Causes Act, go far toward impairing those functions of a receiver which have grown out of the principle that he is an officer of the court appointing him, subject only to its authority and discipline by subjecting him to other jurisdictions in many of his most important duties and responsibilities.¹¹²

The object of the Act to Regulate Commerce is to bring within the operation of salutary and wholesome rules the operation of railroads engaged in commerce between the States. It purports to be controlling to all common carriers thus engaged, and that term, as will be seen from an examination of the authorities, includes the receivers of railroads and controls them to the extent that it would control the corporation if it were managing its own affairs, subject to the limitation that if the proceedings before the Commission or before the courts in their revisory action upon the findings of the Commission should attempt to give the aggrieved party money damages, it would be necessary to resort to the court appointing the receiver in order to obtain satisfaction of the judgment. The main object of complaints before the Commission is the regulation or readjustment of rates alleged to be illegal because unjustly discriminative or unreasonable in themselves, and reparation for injury sustained by reason of such illegality.

¹¹¹ Act, March 3, 1887, C. 373, Section 3 (24 Statutes at Large, 554), August 13, 1888, C. 886, Section 3 (25 Statutes at Large, 436).

¹¹² Beach on Receivers.

The principal purpose of a receivership is to preserve property in controversy *pendente lite*, and this devolves upon the court appointing the receiver the duty of protecting the possession of the property in his hands. The proceedings before the Commission and the orders of that body do not interfere with this rule. The orders of the Commission for reparation or other relief, if not voluntarily obeyed by the carrier, can only be enforced by suit in the proper court. The Commission renders no judgment upon which execution can issue and be levied upon property in the hands of a receiver.¹¹³ The question whether property of a carrier in the possession of the receiver can be made subject to an order of reparation issued by the Commission would arise on proceedings in the courts for the enforcement of such order.¹¹⁴ The Commission does not assess costs; nor does it allow attorneys' fees; nor does its order for the payment of money have the effect of an order, decree, or judgment of a court; nor are such orders enforceable by process; nor do they become liens upon the property of the defendant.¹¹⁵

It is very clear from all the authorities, as well as from the reason of the matter, that the attitude of a receiver to the Interstate Commerce Law is precisely that of the attitude of corporations whose affairs have not been taken possession of by the court. The business they perform is public. It is, as has been stated and shown so many times, the administration of public functions. The managers of railroads whether they are owners or receivers are putting in operation a function of the government and the mere fact of sequestration of the property and the appointment of receivers for the benefit of creditors does not exonerate a management from performing the public duty according

¹¹³ Board of Trade of Troy, Ala., v. Ala. Mid. Ry. Co. et al., 6 I. C. R. 1.

¹¹⁴ Loud v. S. C. R. Co. (1892), 4 I. C. R. 205; 5 I. C. C. R. 529; 2 I. C. R. 732.

¹¹⁵ Washer Grain Co. v. Mo. Pac. Ry. Co., 15 I. C. C. R. 147.

to the rules and regulations which the statutes may prescribe for such business.¹¹⁶

In the case of *Ex parte Tyler*, before the Supreme Court of the United States which involved the obligations of receivers of railroad property to pay taxes assessed by the States in which the property is located, Chief Justice Fuller said: "No rule is better settled than that when a court has appointed a receiver, his possession is the possession of the court, for the benefit of the parties to the suit and all concerned, and cannot be disturbed without the leave of the court; and, that if any person without leave, intentionally interferes with such possession, he necessarily commits a contempt of court, and is liable to punishment therefor."¹¹⁷ Ordinarily the court will not allow its receiver to be sued touching the property in his charge, nor for any malfeasance of the parties, or others, without its consent; and while the third section of the Act of Congress of March 3, 1887,¹¹⁸ now permits a receiver to be sued without leave, it also provides that 'such suit shall be subject to the general equity jurisdiction of the court in which such receiver or manager was appointed, so far as the same shall be necessary to the ends of justice.' Neither that nor the second section, which provides that the receiver shall manage the property 'according to the valid laws of the State in which such property shall be situated,' restricts the power of the Circuit Court to preserve property *in custodia legis* from external attack."¹¹⁹

¹¹⁶ Eighth Annual Report of I. C. C. (1895).

¹¹⁷ *Wiswall v. Sampson*, 14 How. (U. S.) 52, 14 L. ed. 322; *Taylor v. Carryl*, 20 How. (U. S.) 583, 15 L. ed. 1028; *Davis v. Gray*, 16 Wall. 203, 21 L. ed. 447; *Krippendorf v. Hyde*, 110 U. S. 276; 28 L. ed. 145, 4 Sup. Ct. 27; *Barton v. Barbour*, 104 U. S. 126; 26 L. ed. 672; *Gumbel v. Pitkin*, 124 U. S. 131; 31 L. ed. 374, 8 Sup. Ct. 379.

¹¹⁸ Act of Congress of March 3, 1887, 24 Statutes at Large, 552, C. 373.

¹¹⁹ *Ex Parte Tyler*, 149 U. S. 164; 37 L. ed. 689 (1893), 13 Sup. Ct. 785. Section 2 of Act of March 3, 1887, C. 373, reads: "That whenever in any cause pending in any court of the United States there shall be a receiver or manager in possession of any property, such receiver or manager shall manage and operate such property accord-

A receiver of a railroad company appointed by a court of the United States may be sued, without the permission of such court, under the Act of March 3, 1887, for a cause of action arising from the acts of his predecessor in the same office.¹²⁰

Actions against the receiver are in law actions against the receivership, or the funds in the hands of the receiver, and his contracts, misfeasances, negligence and liabilities are official and not personal, and judgments against him as receiver are payable only from the funds in his hands.¹²¹

In an action in which service of process on a station agent of a railroad in the possession of a receiver was declared to be sufficient, Thayer, J., said: "The third section of the Judicial Act of March 3, 1887, authorizing suit to be brought against receivers of railroads without special leave of the court by which they were appointed is intended, as we think, to place the receiver on the same plane with railway companies, both as respects their liability to be sued for acts done while operating the railroad, and as respects the mode of obtaining service."¹²²

When a court which has appointed receivers for a railroad company is called upon to enforce an order made before such appointment, by the Interstate Commerce Commission, it cannot treat the petition merely as an appeal to the court ing to the requirements of the valid laws of the State in which such property shall be situated, in the same manner that the owner or possessor thereof would be bound to do if in possession thereof. Any receiver or manager who shall wilfully violate the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not exceeding three thousand dollars, or by imprisonment not exceeding one year, or both said punishments, in the discretion of the court."

¹²⁰ *McNulta v. Lochridge*, Adm., 141 U. S. 327-332; 35 L. ed. 796, 12 Sup. Ct. 11 (1891), affirming decision of Supreme Court of Illinois, 137 Ill. 270, 27 N. E. 452; *T. & P. v. Cox*, 145 U. S. 593; 36 L. ed. 829, 12 Sup. Ct. 905.

¹²¹ *Ibid.*

¹²² *Eddy v. LaFayette*, 49 Fed. Rep. 807, following *Central Trust Co. v. St. L. A. & F. Ry.* (1897), 40 Fed. Rep. 426; affirmed in 163 U. S. 456; 41 L. ed. 225, 16 Sup. Ct. Rep. 1082.

to regulate the conduct of its receivers in the receivership case, but must apply to them the same rules and principles which would be applied if the railroad was being operated and managed by the officers and agents of the corporation itself. The receivers have the same right to question the validity of the order made by the Commission as would the railroad company.¹²³

A receiver not being bound to continue contracts made before his appointment, is not criminally liable under the provisions of the Interstate Commerce Act, for the violation of a joint tariff previously established by the railroad company of which he is receiver and another company, and which he has not ratified, adopted, or recognized in any way.¹²⁴

The fact of a receivership for a defendant carrier subsequent to complaint should not interfere with the progress of a proceeding brought merely for the purpose of a railway regulation.¹²⁵

Receivers of railroad companies are common carriers subject to the prohibition and requirement of, and to regulation under, the Act to Regulate Commerce.¹²⁶

Prior leave of a court which has appointed a receiver of a railroad company is not necessary to entitle a shipper to complain against such receiver in a proceeding before the Commission, nor is such leave necessary to give the Commission jurisdiction in such a proceeding.¹²⁷

The Rules of Practice before the Commission provide that "when the line of a carrier is operated by a receiver or trustee, both the carrier and its receiver or trustee should be made defendants in cases involving transportation over such lines."¹²⁸

¹²³ *Farmers' Loan & Trust Co. v. Nor. Pac. Ry. Co.*, 83 Fed. Rep. 249.

¹²⁴ *United States v. De Coursey*, 82 Fed. Rep. 302.

¹²⁵ *Railroad Commission of Georgia v. Clyde S. S. Co. et al.* (1892), 4 I. C. R. 120; 5 I. C. R. 324.

¹²⁶ *Independent Ref. Association v. W. N. Y. & P. R. Co. et al.*, 6 I. C. R. (1896).

¹²⁷ *May v. McNeill, Receiver* (1896), 6 I. C. R. 520.

¹²⁸ Article 2, Rules of Practice before the Interstate Commerce Commission.

§ 52. Successors to Common Carriers and Purchasers Pendente Lite.

When an order against unjust discrimination made by the Interstate Commerce Commission is binding on a railroad company, it is binding on the successor of such company. The court in delivering its opinion said: "It would indeed be lamentable if a lawful order against unjust discrimination by a railroad company, made by the Interstate Commerce Commission after a protracted investigation, could be nullified by the subsequent reorganization of the company, or transfer of its railroad and franchises to another corporation. It is a settled principle that the purchaser of property in litigation, *pendente lite*, is bound by the judgment or decree in the suit."¹²⁹

§ 53. Nature of Organization of the Carrier Immaterial to the Attaching of Jurisdiction of Commission.

¶ A. IN GENERAL.

The Act to Regulate Commerce applies to common carriers and provides no distinction between those that are operated by individual properties, partnerships, joint stock companies, or corporations.¹³⁰

¶ B. FEDERAL CHARTER DOES NOT PRECLUDE JURISDICTION.

A railroad chartered under Federal statute is nevertheless subject to the jurisdiction, as in the case of the Northern Pacific R. Co., Congress having reserved the right of alteration and amendment, which was exercised by the Act to Regulate Commerce.¹³¹

¹²⁹ *I. C. C. v. W. N. Y. & P. R. Co. et al.* (1897), 82 Fed Rep. 192.

¹³⁰ *American Bankers' Association v. American Express Company et al.*, 15 I. C. C. R. 15.

¹³¹ *Raworth v. Northern Pacific R. Co. et al.* (1892), 5 I. C. R. 234; 2 I. C. R. 614; 3 I. C. R. 857; affirmed in *Merchants' Union of Spokane Falls v. Northern Pacific R. Co. et al.* (1892), 5 I. C. C. R. 478; 2 I. C. R. 452; 4 I. C. R. 183.

CHAPTER V.

TRANSPORTATION AND COMMON CARRIERS NOT SUBJECT TO THE JURISDICTION OF THE INTERSTATE COMMERCE COMMISSION.

SECTION

- 54. Intrastate Transportation.
- 55. Foreign Commerce.
- 56. State Common Carriers.
- 57. Water Carriers { Inland
Ocean.
- 58. Transportation by Team, Transfer, Express and Omnibus Wagon,
Stage-Coach, and other Private Carriers.
- 59. Bridges and Bridge Companies.
- 60. Ferries and Ferry Companies.
- 61. Switching Companies.
- 62. Foreign Railroads.
- 63. Rail and Water Carriers Operating in Alaska.

§ 54. Intrastate Transportation.

¶ A. IN GENERAL.

The Federal Constitution provides that "The Congress shall have power * * * to regulate commerce with foreign nations, and among the several States, and with the Indian tribes."¹

It will be seen that the above constitutional provision excludes from Federal regulation and control that commerce wholly within a State. In enacting the Interstate Commerce Act Congress had in view and intended to make provision for commerce between States and Territories, commerce going to and coming from foreign countries and the whole field of commerce, except that wholly within a State.² When Con-

¹ Federal Constitution, Article 1, Section 8, Clause 3.

² T. & P. Ry. Co. v. I. C. C., 162 U. S. 197, 16 Sup. Ct. Rep. 666, 40 L. ed. 940 (1896).

gress passed the Act to Regulate Commerce it probably took cognizance of its inability to control intrastate commerce; that is, commerce wholly within one State; and in order to obviate any confusion as to the exact jurisdiction of the Interstate Commerce Commission over such commerce it included the following proviso within Section 1 of the Act: "That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory.³ * * * nor shall they apply to the transmission of messages by telephone, telegraph or cable wholly within one State and not transmitted to or from a foreign country, from or to any State or Territory." This proviso excludes from national regulation the purely internal commerce of a State—that which is confined within its limits, which originates and ends in the same State.⁴

The Act does not include the carriage or handling of property, by rail or otherwise, when such carriage is wholly within a State, unless the same is directly shipped to or from a foreign country from or to such State.⁵

An interstate shipment, on reaching the point specified in the original contract of transportation, ceases to be an interstate shipment, and its further transportation to another point within the same State, on the order of the consignee, is controlled by the law of the State, and not by the Interstate Commerce Act.⁶

The Commission has no control over traffic moving wholly within a single State, nor has it any power to award reparation for discriminations affecting such shipments.⁷

³ Act to Regulate Commerce, Section 1, (as amended June 18, 1910.)

⁴ *Mattingly v. Penna. Co.*, 2 I. C. R. 806; 3 I. C. C. R. 592.

⁵ *Ex Parte Koehler* (1887), 30 Fed. Rep. 867.

⁶ *Gulf, C. & S. F. Ry. Co. v. Texas* (1907), 204 U. S. 403; 51 L. ed. 540, 27 Sup. Ct. Rep. 360, affirming 97 Texas, 274, 78 S. W. 495; so-called "Goldwaith Case."

⁷ *Gallogly & Firestine v. C. H. & D. Ry. Co.* (1905), 11 I. C. C. R. 1; see also discussion under *Hurlburt v. L. S. & M. S. Ry. Co.* (1888), 2 I. C. C. R. 122; 2 I. C. R. 81; *N. J. Fruit Ex. v. C. R. R. of N. J.* (1888),

It will be seen, therefore, that the Interstate Commerce Commission has absolutely no jurisdiction over shipments that originate at a point in one State and which are destined to a point in the same State, where the movement is entirely within that State. For example: A shipment of machinery from Peoria, Ill., to Chicago, Ill., is not subject to the provisions of the Act to Regulate Commerce. Another example is where complainant shipped a carload of cement plaster from Acme, Texas, to East St. Louis, Ill., the rate in effect being 18 cents per 100 pounds between those points and 23 cents per 100 pounds from Acme, Texas, to Braidwood, Ill. When the car reached East St. Louis it was ordered by the complainant to its warehouse and the 18-cent rate was paid. Complainant removed one-half of the carload and rebilled the car to Braidwood, Ill. The carrier's tariff did not provide for reconsignment at East St. Louis. The local rate of 9 cents per 100 pounds was assessed from East St. Louis to Braidwood. Complainant insisted that the balance of the through rate of 5 cents per 100 pounds should have been collected, and filed complaint before the Commission on that basis. *Held*, That the shipment from East St. Louis to Braidwood was a State movement, and the carrier had no right to allow it to go forward at the balance of the through rate.⁸ And this is true as to intrastate traffic, even though the same is handled by an *interstate* common carrier.

¶ B. TRAFFIC TRANSPORTED BETWEEN POINTS IN THE SAME STATE WHICH PASSES THROUGH AN ADJOINING STATE IN REACHING DESTINATION.

For full explanation, see "*Interstate Transportation*," Section 28, Paragraph E, *ante*.

¶ C. WHEN A TERRITORY HAS BEEN ADMITTED INTO THE UNION AS A STATE.

When a Territory is admitted into the Union as a State, 2 I. C. C. R. 142; 2 I. C. R. 84; *Capehart et al v. L. & N. R. Co. et al.* (1890), 3 I. C. R. 278, 4 I. C. C. R. 265.

⁸ *Acme Cement Plaster Co. v. C. & A. Rd. Co. et al.* (1909), 17 I. C. C. R. 220, following *Gulf, C. & S. F. Ry. Co. v. Texas*, *supra*.

upon the same footing as all the other States, the territorial government and courts cease to exist, and matters of national cognizance remain within the power and jurisdiction of the nation, but other matters come under the power and jurisdiction of the State.⁹

As stated under "*Intraterritorial Transportation*," Section 29, *ante*, the Interstate Commerce Commission has absolute jurisdiction over commerce from one place in a Territory to another place in the same Territory, but only so long as the Territory is unorganized. *Ipsa facto*, when a Territory is admitted into the Union as a State the Commission loses its jurisdiction, and such commerce is then subject to the laws of the new State.

Reparation asked on account of alleged unreasonable freight rates charged on shipments of cross-ties moving between April 25 and August 12, 1907, from Barnett to McAlester, Ind. Ter. Subsequent to the movement of these shipments and the filing of the petition this Territory was admitted as a State into the Union, and the points of origin and destination are now located in the State of Oklahoma. *Held*, By the Act of Congress admitting Oklahoma to statehood the intraterritorial jurisdiction of the Commission ceased to apply to the territory now embraced in that State. The Commission, therefore, could make no lawful order in a case over which it has no jurisdiction under the provisions of the Act to Regulate Commerce. Complaint was dismissed for want of jurisdiction.¹⁰ The provisions of the Act to Regulate Com-

⁹ *Koenigsberger v. Richmond Silver Mining Co.*, 158 U. S. 48; 39 L. ed. 892, 15 Sup. Ct. Rep. 751; see also *McNulty v. Batty et al.*, 10 How. (U. S.) 72, 13 L. ed. 333; *Freeborn et al. v. Smith et al.*, 2 Wall. (U. S.) 173, 17 L. ed. 922.

¹⁰ *Hussey v. C. R. I. & P. Ry.*, 13 I. C. C. R. 366, in support of which the following cases were cited:

McNulty v. Batty, 10 How. (U. S.) 72, 13 L. ed. 333; *Ex Parte McCadle*, 7 Wall. (U. S.) 514, 19 L. ed. 265; *Norris v. Crocker*, 13 How. (U. S.) 429, 14 L. ed. 210; *Koenigsberger v. Richmond Silver Mining Co.*, 158 U. S. 48; 39 L. ed. 892, 15 Sup. Ct. Rep. 751; *United States v. Boisdore*, 8 How. (U. S.) 121, 12 L. ed. 1012; *Yeaton v. United States*, 5 Cranch, (U. S.) 281, 3 L. ed. 101; *South Carolina v.*

merce applying to carriers transporting property "from one place in a Territory to another place in the same Territory,"¹¹ so far as it related to the Territory of Oklahoma, expired by its own force on November 16, 1907, when Oklahoma was admitted as a State.¹²

§ 55. Foreign Commerce.

By the plain term of the Act the Commission, in its control over foreign commerce to and from a country not adjacent to the United States, is limited to the regulation of such traffic from the point of origin to the port of transshipment, or from the port of entry to the point of destination. An inland movement of either export or import traffic is a condition precedent to the attaching of the jurisdiction of the Commission, and then only over such inland portion of the haul. The Interstate Commerce Commission has no control over a shipment to or from a foreign country, not adjacent to the United States, after it has passed beyond the American seaboard on export traffic, and before it reaches the American seaboard on a movement of import traffic.¹³ For example: On a shipment from Pittsburg, Pa., to Liverpool, England, which travels via the port of New York, the jurisdiction of the Commission ceases when the shipment clears from the port. And, of course, the Commission has no jurisdiction over foreign traffic which originates at a seaport and where no inland haul is involved.

For further explanation, see "*Ocean Carriers*," Section 48, *ante*.

As to the control of the Commission over traffic destined

Gaillard, 101 U. S. 437, 25 L. ed. 938; B. & O. R. R. Co. v. Grant, 98 U. S. 298, 25 L. ed. 231; Freeborn v. Smith, 2 Wall. (U. S.) 173, 17 L. ed. 922; Merchants' Ins. Co. v. Ritchie, 5 Wall. (U. S.) 541, 18 L. ed. 540; Moore v. United States, 29 C. C. A. 269, 56 U. S. App. 471, 85 Fed. Rep. 465.

¹¹ Act to Regulate Commerce, Section 1, Appendix.

¹² Chandler v. F. S. W. R., 13 I. C. C. R. 473.

¹³ Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al. (1908), 13 I. C. C. R. 267; Kemble v. B. & A. Rd. Co. et al. (1899), 8 I. C. C. R. 110.

to the adjacent foreign countries, such as Canada and Mexico, see "*Foreign Railroads*," Section 42, *ante*.

The above position does not conclude the Commission against an examination into the relation which exists between the rail carriers of the United States and the water carriers, and condemnation of such arrangement, if the rail carriers to the seaboard are by any means whatsoever disobeying any provision of the Act or omitting to comply with its requirements.¹⁴

§ 56. State Common Carriers.

As stated under "*Intrastate Transportation*," Section 54, *supra*, that commerce wholly within a State is not subject to the jurisdiction of the Interstate Commerce Commission, neither is a common carrier whose line lies wholly within a State subject to the provisions of the Act to Regulate Commerce, unless, of course, they are engaged in the handling of interstate commerce. Although the provisions in the first section of the Act excludes from regulation the purely internal commerce of a State, yet, when a State carrier engages in interstate commerce it becomes a national instrumentality for the purpose of such commerce, and is subject to the regulations prescribed by the national authority. However, one engaging in Interstate Commerce does not thereby submit all his business to the regulating power of Congress.¹⁵

For full explanation, see "*State Railroads Engaged in Interstate Commerce*," Section 33, *ante*.

§ 57. Water Carriers { Inland Ocean.

In the proceeding styled "In the Matter of Jurisdiction Over Water Carriers,"¹⁶ the Commission held that carriers of

¹⁴ *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co. et al.* (1908), 13 I. C. C. R. 267; *Kemble v. B. & A. Rd. Co. et al.* (1899), 8 I. C. C. R. 110.

¹⁵ *Employers' Liability Cases* (1908), 207 U. S. 463, 28 Sup. Ct. 141, 52 L. ed. 297.

¹⁶ *In the Matter of Jurisdiction over Water Carriers*, 15 I. C. C. R. 205.

interstate commerce by water are subject to the Act to Regulate Commerce only in respect of traffic transported under a common control, management or arrangement with a rail carrier, and in respect of traffic not so transported they are exempt from its provisions.

The Commission's consideration in this proceeding is here quoted:

"The question at issue in this case may be stated as follows: Does the fact that a water carrier joins with a rail carrier, in forming a through or establishing a joint rate for the transportation of certain traffic, subject all the interstate traffic of such water carriers to the requirements of the Act and to the jurisdiction of the Commission, or, stated in a narrower form, does such action on the part of a water carrier subject its port-to-port traffic to all the provisions of the Act, including the posting and observing of tariffs and similar requirements?

"The question arises because of the somewhat ambiguous language used in Section 1 of the Act, reading as follows:

"That the provisions of this Act shall apply * * * to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water, when both are used under a common control, management or arrangement for a continuous carriage or shipment).

"This provision of the law has not been changed since the original enactment of 1887, except that the parentheses, as indicated in the foregoing quotation, were added by the amendment of 1906.

"Looking to the history of the enactment, and without attempting to quote the pertinent portions of the congressional debates and committee reports preceding the enactment of the law of 1887, there can be no doubt that the main purpose of the Act was to regulate transportation by railroad; that the regulation of water lines was merely incidental and collateral, and was included in order that the regulation of railroads might be effective, and not virtually nullified by arrangements between railroads and water lines. It is not necessary to recite the reasons which induced the legislation;

it is sufficient to determine the intention of the law-making body.

“As a fundamental proposition, it is obvious that interstate commerce wholly by railroad is subject to the Act, and that interstate commerce wholly by water is not subject to the Act. It is equally obvious that interstate commerce, partly by railroad and partly by water, under a common control, management or arrangement for a continuous carriage or shipment, is subject to the Act. Does the fact that some of the commerce transported by a carrier is subject to the Act *ipso facto* render all the commerce transported by that carrier subject to the Act? The leading case in point is *Cincinnati, New Orleans & Texas Pacific Railway Co. v. Interstate Commerce Commission*.¹⁷ The substance of so much of that decision as relates to the present matter is stated in the syllabus as follows:

“When a State railroad company whose road lies within the limits of a State enters into the carriage of foreign freight by agreeing to receive the goods by virtue of foreign through bills of lading, and to participate in through rates and charges, it thereby becomes a part of a continuous line, not made by a consolidation with the foreign companies, but by an arrangement for the continuous carriage or shipment from one State to another, and thus becomes amenable to the Federal Act with respect to such interstate commerce; and, having thus subjected itself to the control of the Interstate Commerce Commission, it cannot limit that control in respect to foreign traffic to certain points on its road to the exclusion of other points.

“When goods shipped under a through bill of lading, or in any other way indicating a common control, management or arrangement, from a point in one State to a point in another State, are received in transit by a State common carrier, such carrier, if a railroad company, must be deemed to have subjected its road to another arrangement for a continuous carriage or shipment within the meaning of the Act to Regulate Commerce.

“When analyzed, practically all this case decided upon the point here involved is that the interstate transportation in question was subject to the Act to Regulate Commerce by reason of the fact that, having entered into a common control, management, or arrangement for the through carriage of

¹⁷ C. N. O. & T. P. v. I. C. C., 162 U. S. 184, 40 L. ed. 935, 16 Sup. Ct. 700; See *Mutual Transit Co. v. United States* (1910), 178 Fed. Rep. 664.

goods, a new line has been formed independent of its constituent elements, and such new line cannot discriminate as between different points. In this case the court took occasion to say:

"It may be that if, in the present case, the goods of the James & Mayer Buggy Co. had reached Atlanta, and there and then, for the first time, and independently of any existing arrangement with the railroad companies that had transported them thither, the Georgia R. R. Co. was asked to transport them, whether to Augusta or to Social Circle, that company could undertake such transportation free from the control of any supervision except that of the State of Georgia.

* * * * *

"All we wish to be understood to hold is, that when goods shipped under a through bill of lading from a point in one State to a point in another, are received in transit by a State common carrier, under a conventional division of the charges, such carrier must be deemed to have subjected its road to an arrangement for a continuous carriage or shipment within the meaning of the Act to Regulate Commerce.

"Traffic wholly within a State is not subject to the Act, for the reason that Congress has no authority to regulate such commerce. Traffic wholly by water is not subject to the Act, for the reason that Congress did not in that statute exercise its admitted authority over interstate transportation by water. The Commission's only duty is to execute the mandate of the Congress.

"The language of the provision in question indicated its meaning. The Act applies to any common carrier or carriers engaged in transportation partly by rail and partly by water *when* both are used under a common control, management, or arrangement for a continuous carriage or shipment. The use of the word 'when' is significant, and its natural meaning seems to be that a water carrier is subject to the Act 'in so far as' or 'to such extent as' it carries traffic under a common control, management, or arrangement with a railroad. It need hardly be stated that the Act does not require publication of or adherence to rates upon purely intrastate traffic. With regard, then, to the history and purpose of the enactment the language used and the rules of statutory construction, it is difficult to see how serious doubt can arise that Congress did not intend

to regulate the charges exacted upon the port-to-port business of water carrier; but, if further support of that position is necessary, it is amply found in the conditions under which port-to-port business is conducted.

“If one water carrier by becoming a party to a joint rate with a railroad is thereby required to publish and adhere to its rates between ports, it could not hope to compete with a carrier which is not required to publish and maintain its rates, and the result would be that the actual operation of the law instead of tending to promote and facilitate commerce, would tend rather to its injury by making unprofitable the instrumentalities provided for the carriage of such commerce. Under such a construction of the law there would exist the commercial anomaly of two water carriers between the same ports attempting to secure the transportation of competitive traffic, the one bound to observe and collect rates which it had published thirty days in advance, the other able to make any rates which would secure the traffic; one within the law and subject to severe penalties for its violation, the other without the law and governed only by its business interests. That the Congress intended to produce such a condition—to create in a commercial sense a favored class of water carriers not subject to the Act—and penalize other water carriers for their attempt to facilitate commerce by joining in through routes with rail carriers, seems unreasonable and might be held unconstitutional, as depriving the latter class of carriers of the equal protection of the law.

“One further illustration points to the same conclusion. Under certain conditions the Commission is authorized to establish through routes and joint rates, and this provision applies where one of the carriers is a water line. Suppose that, upon proper showing, the Commission establishes a joint rail and water rate, say, from Rochester, N. Y., to the City of New York by rail and thence by water carrier to Norfolk, Va. Having established one satisfactory through route between Rochester and Norfolk, the Commission is without authority to establish another and therefore could

not by similar means make the port to port traffic of competing carriers from New York to Norfolk subject to the Act. The net result of the proceeding would simply be to injure and possibly destroy the business of the carrier required to join in the through rate, and this would come dangerously near to taking that carrier's property without due process of law.

"It has been suggested that if the carrier's rail-and-water shipments are subject to the Act and its port-to-port shipments are not, the water carrier might join in a through rate to one interior point and refuse to join in a through rate to another interior point similarly situated, and by manipulation of its port-to-port rates unjustly discriminate in favor of the point to which no through rate applied. This objection seems more apparent than real. If the carriers make a joint rate or through route between two points, they form a new line independent of its constituent elements, and that through line, under the principle announced in *C. N. O. & T. P. Ry. v. I. C. C.*, *supra*, would certainly be prohibited from unjustly discriminating within the meaning of the statute. It does not seem difficult to remedy such a situation without requiring the water carrier to subject its port-to-port business to the requirements of the Act, for the simple reason that the new through line is prohibited from unduly preferring any community in any respect whatsoever. Moreover, the rail carrier, in respect of such traffic is undoubtedly subject to the Act, and if it joins in such an arrangement would become with the water carrier a joint *tort feasor* and subject to prosecution as such.

"To hold otherwise amounts to this—that an interstate carrier by water must elect to bring its business within control of the Commission or relinquish all through business, freight or passenger, however profitable to the carrier or advantageous to the public. Opposed to this we have the plainly expressed intention of the Congress to exclude water carriage of every kind from the operation of the Act and, by exception, to include it only in such cases as Congress

thought necessary to effectually control and prevent abuses by rail carriers whose business was conducted in connection with the use of water transportation.

“It is further suggested, if port-to-port traffic carried by a water line which also carried rail-and-water traffic is excluded from the operation of the Act, that such rates might be allowed on port-to-port traffic to one who is also a shipper of rail-and-water traffic as to give that shipper an advantage over competing shippers by rail and water. To state the proposition is to refute it. The granting of preferential rates on port-to-port traffic to influence rail-and-water traffic, amounting to a rebate on the latter, would bring the transaction clearly within the prohibitions of Section 10 of the Act and Section 1 of the Elkins Law. If port-to-port traffic should be subjected to the Act because otherwise opportunity is afforded for wrong doing in respect of rail-and-water rates, it would seem similarly needful to subject intrastate traffic which in respect of interstate rates affords corresponding opportunity. The question is not as to the character of the traffic but whether by any *device* a favored shipper obtains transportation at less than the established rates, and it makes no difference whether the unlawful result is accomplished by preferential rates on port-to-port traffic, on intrastate traffic by a free pass or by the actual payment of money; in either case there is a violation of law for which a penalty is provided.

“If it be true, as was said in *Texas Pacific Ry. Co. v. Interstate Commerce Commission*,¹⁸ that ‘an intention to promote and facilitate it (commerce) and not to hamper or destroy it is naturally to be attributed to Congress’ it seems clear that the port-to-port business of water carriers is not within the purview of the statute. This construction gives workable effect to every provision of the Act and is in harmony with its remedial purposes. It controls the all-rail and the part-rail-and-part-water transportations, which is the sub-

¹⁸ *Texas & Pac. Ry. Co. v. I. C. C.*, 162 U. S. 197-218, 40 L. ed. 940, 16 Sup. Ct. 666.

ject of 'common arrangement,' and leaves all other water carriage open to free competition. Upon further consideration we are constrained to adopt the view that water carriers are subject to the law only as to such traffic as is transported under a common control, management, or arrangement with a rail carrier, and that as to traffic not so transported they are exempt from its provisions."

Cockrell, Commissioner, in concurring in the above majority opinion of the Commission stated:

"The language of the original Act was:

"That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment between interstate points.

"Probably the first judicial construction given to the language 'or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment' was by Judge Deady in the United States Circuit Court in Oregon in *Ex parte Koehler, Receiver*, April 4, 1887,¹⁹ in these words:

"So long as the railway and the steamer are each operated under a separate and distinct control, making its own rates and only bill for the carriage and safe delivery of the goods at the end of its own route, the Act does not apply to the transportation. To make these carriers subject to the Act the railway and vessel must, as therein provided, be operated or used under a 'common control'—a control to which each is a like subject and by which rates are prescribed and bills of lading given for the carriage of goods over both routes as one.

"The language of the Act first quoted remained unchanged up to June 29, 1906, when, by the Hepburn Act, the words 'or partly by railroad and partly by water when both are used under a common control, management, or arrangement, for a continuous carriage or shipment' were parenthesized, thus indicating the intention of the Congress to be:

"First. To apply the Act to all railroad carriers, regardless of their number, on all interstate transportation.

"Second. To apply the Act to such interstate transporta-

¹⁹ *Ex Parte Koehler, Receiver*, 30 Fed. Rep. 867.

tion partly by railroad and partly by water, and only when, both the railroad and the water, are used by the respective carriers under a common control, management or arrangement for a continuous carriage or shipment. There was and is no necessity for a common control or management between railroads in interstate transportation. They are completely covered by the Act and are required to publish rates, to establish through routes and joint rates, and to do all necessary things for a continuous carriage or shipment.

“As to foreign commerce, exports and imports, the first section limits the jurisdiction to the transit from the place of origin in the United States to the port of transshipment, and from the port of entry to destination either in the United States or an adjacent foreign country, thus confining the jurisdiction exclusively to the part of the transportation wholly within the United States. The Supreme Court of the United States in *Armour Packing Co. v. United States*,²⁰ uses this language:

“There is no attempt in the language of this Act to exempt such foreign commerce as is carried on a through bill of lading; on the contrary the Act in terms applies to the transportation of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment.

“As to the coastwise, the river, and the lake commerce, the Act applies only to such passengers and property as both the railroad and the water carriers engaged in transporting partly by railroad and partly by water under a common control, management, or arrangement for a continuous carriage or shipment from and to such designated points as may be named in the tariffs of the railroad carriers concurred in by the water carriers or by the water carriers concurred in by the railroad. The law plainly says:

“Every common carrier subject to this Act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

“No carrier, unless otherwise provided by this Act, shall engage

²⁰ *Armour Packing Co. v. U. S.* (1908), 209 U. S. 56, 52 L. ed. 681; 28 Sup. Ct. 428.

or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act.

“Congress has unrestricted ‘power to regulate commerce with foreign nations and between the States and with the Indian tribes.’ Why has it limited the jurisdiction of the Commission over foreign commerce to the transit of such commerce to and from ports of transshipment and ports of entry, and over coastwise, river, and lake commerce only when such commerce is transported partly by railroad and partly by water under a common control, management, or arrangement for a continuous carriage or shipment? The answer is that Congress began legislating for the control and regulation of foreign commerce and commerce wholly by water along our coast and on our rivers and lakes at the very first session of the first Congress held under the Constitution and has ever since, from Congress to Congress, been enacting additional amendatory legislation deemed necessary for the control and regulation of such commerce, and placed the enforcement of such laws under the Treasury Department up to February 14, 1903, when the control and regulation was transferred to the Department of Commerce and Labor, where it still remains, and has placed such common carrier wholly by water under the Anti-trust Law, leaving them practically uncontrolled or unregulated only as to their rates, fares, and charges, and as to these they are subject to the common law and can only charge reasonable and just rates. In the discussion and passage of the Interstate Commerce Law in 1887, mention was made of these water carriers, and also in the passage of the Hepburn Act they were in the minds of Congress, but yet Congress has not deemed it necessary or best to place them under this Commission. Transportation wholly by water is entirely different from transportation wholly by railroad and partly by railroad and partly by water. On our coastwise, river, and lake traffic the water is free and ample for all passengers and shippers to use their own vehicles for such trans-

portation, just as on our roads or country highways; but in transportation, wholly by railroad or partly by railroad and partly by water, passengers and shippers cannot use their own vehicles or means of transportation."

Then again, the ocean is a highway, free to all and there is no such thing as stability of rates upon water. It is more desirable to leave them unhampered by local restrictions to meet natural competitive conditions and to bid against each other for cargo.

An ocean carrier established under the laws of Cuba and transporting traffic between Havana, Cuba, and Galveston, Texas, is not subject to the Act to Regulate Commerce.²¹

For further explanation as to when water carriers are not subject to the jurisdiction of the Interstate Commerce Commission and to the provisions of the Act to Regulate Commerce, see "*Inland Water Carriers*," Section 47, and "*Ocean Carriers*," Section 48, *ante*.

§ 58. Transportation by Team, Transfer, Express, and Omnibus Wagon, Stage-Coach, and other Private Carriers.

The only parties subject to the provisions of the Act and to the jurisdiction of the Interstate Commerce Commission are those common carriers engaged in the transportation of passengers or property as described in the Act. The first paragraph of Section 1 of the Act limits the application of the various provisions of the Act not to all common carriers, but to certain classes of common carriers there expressly named and specified. Aside from the pipe lines and sleeping car and express companies, which are named in a specific and separate clause, the only common carriers to which the provisions of the Act apply²² are those engaged in the transportation of passengers or property "wholly by railroad or partly by railroad and partly by water."²³ And certainly wagon carriers are engaged in transporting neither by rail nor by water.

²¹ *Lykes S. S. Line v. Com'l Union et al.* (1908), 13 I. C. C. R. 310.

²² Act, Section 1, Appendix.

²³ *Re Exchange Free Transportation* (1907), 12 I. C. C. R. 40.

The following carriers therefore, do not come within the category of those to which the provisions of the Act apply, no matter whether engaged in state, interstate or foreign commerce as either private or common carriers:

¶ A. TEAM OR WAGON.

The provisions of the Act to Regulate Commerce do not apply to transportation by team or wagon.²⁴

¶ B. TRANSFER AND OMNIBUS WAGONS.

The petitioner in this case, the Frank Parmelee Company, was a common carrier engaged in the City of Chicago in transferring passengers and baggage by omnibus and transfer wagons between railroad stations and such stations and private residences, and performed service connected with interstate passenger traffic: *Held*, That nevertheless, such carrier was not subject to the provisions of the Act to Regulate Commerce, nor to the jurisdiction of the Interstate Commerce Commission, because it is not a common carrier belonging to any of the classes enumerated in the Act.²⁵

¶ C. EXPRESS WAGONS.

From the cases discussed above, it will be seen that common carriers engaged in the transportation of property by express wagons, which are owned and operated separately and independently of those express companies which are operated over railroads as described in the Act, are not subject to the jurisdiction of the Interstate Commerce Commission, nor to the provisions of the Act.

¶ D. STAGE-COACH, ETC.

A stage-coach company is not subject to the provisions of the Act to Regulate Commerce.²⁶ Neither are hacks,

²⁴ Cary et al. v. Eureka Springs Ry. Co. et al. (1897), 7 I. C. C. R. 286.

²⁵ Re Exchange Free Transportation (1907), 12 I. C. C. R. 40.

²⁶ Wylie v. Northern Pacific Ry. Co. et al. (1905), 11 I. C. C. R. 145.

baggage wagons, cabs, drays, carts, automobiles, etc., subject to the jurisdiction of the Commission.

§ 59. Bridges and Bridge Companies.

¶ A. INDEPENDENTLY OPERATED.

A company owning and operating a bridge which connects two States, and which is independent of any railroad company, is not, either in law or in fact, a common carrier within the scope and meaning of Section 1 of the Act to Regulate Commerce; and it cannot invoke the provisions of said Act to compel railway companies to transact business with or through such bridge company. Between such a bridge company and the railway carriers of the country the Act establishes no such reciprocal relations, duties and obligations as require the latter to form business connections with the former.²⁷

The bridge company is not itself a common carrier; it merely affords a highway for interstate commerce.²⁸

A bridge across waters between two States, and connecting such States, is an instrument of interstate commerce;²⁹ and, although Congress has plenary power to regulate and control such instrumentalities of commerce, yet the Interstate Commerce Commission has not been vested with jurisdiction over them.³⁰

See "*Bridges and Bridge Companies*," Section 43, *ante*, as to when such instrumentalities of interstate commerce are subject to the jurisdiction of the Commission.

¶ B. WHERE A RAILROAD COMPANY ACQUIRES THE USE OF A BRIDGE.

Where a railway company, by contract with a bridge com-

²⁷ Ky. & Ind. Bridge Co. v. L. & N. R. Co., 37 Fed. Rep. 567.

²⁸ Cov. & Cin. Bridge Co. v. Com. of Kentucky, 154 U. S. 204, 38 L. ed. 962, 14 Sup. Ct. 1087.

²⁹ Ibid.

³⁰ For Power of Congress, see Newport & Cincinnati Bridge Co. v. United States, 105 U. S. 470, 26 L. ed. 1143.

pany, acquires the right to use a bridge, with its approaches, for the engines, cars and trains of the railway company, the first section of the Act to Regulate Commerce regards the railway as the owner or operator of the bridge and approaches, for the time being, as to all freight transported by the railway company over the bridge; and as to all such traffic the railway company, and not the bridge company, must be regarded as the common carrier. Such a bridge company is not, either in law or in fact, a common carrier of interstate traffic, within the scope and meaning of said section; and it cannot invoke the provisions of said Act to compel railway companies to transact business with or through such bridge company. Between such a bridge company and the railway carriers of the country, the Act establishes no such reciprocal relations, duties and obligations as require the latter to form business connections with the former.³¹

§ 60. Ferries and Ferry Companies.

An independent ferry company is not subject to the provisions of the Act to Regulate Commerce, or to the jurisdiction of the Interstate Commerce Commission, even though it be engaged in receiving from and delivering freight to connecting railroad, if it is not operating with such railroad under a common control, management or arrangement for a continuous carriage or shipment. Being a water carrier, it would not be subject to the Act, and would rest under no obligation to publish or observe its tariff rates, whether its transportation were State or interstate, until it entered into some arrangement with a rail carrier for the interstate transportation of passengers or property.³²

The Interstate Commerce Commission also decided that carriers of interstate commerce by water are subject to the Act to Regulate Commerce only in respect to traffic transported under a common control, management or arrangement with a rail carrier, and in respect of traffic not so transported they

³¹ Ky. & Ind. Bridge Co. v. L. & N. R. Co., 37 Fed. Rep. 567.

³² Enterprise Transp. Co. v. Pa. R. R. Co. et al., 12 I. C. C. R. 327.

are exempt from its provisions.³³ Thus it will be seen that a water carrier may unite with a railroad company in making a through route and joint rate on a particular traffic without subjecting all its interstate traffic to the provisions of the law and to the jurisdiction of the Commission.

A ferry is defined as "a continuation of the highway from one side of the water over which it passes to the other, and is for the transportation of passengers and property, or of travelers, with their teams and vehicles, and such other property as they may carry or have with them"³⁴ and, although they are instrumentalities of commerce over which Congress has full and complete power to regulate and control, yet in the Act to Regulate Commerce they have not seen fit to vest the Interstate Commerce Commission with jurisdiction over them when they are independently operated."³⁵

For further discussion see "*Ferries and Ferry Companies*," Section 44, and "*Inland Water Carriers*," Section 47, *ante*.

§ 61. Switching Companies.

The switching of cars loaded with freight, afterwards transported to another State, which is purely local, and which is independently contracted for, which has no relation to the contract of carriage under which the freight is removed beyond the border of the State, which has no relation to the ultimate destination of the cars, and which begins and ends before the destination of any car handled is fixed, is a mere preliminary incident to interstate commerce, and subject to State control.³⁶

§ 62. Foreign Railroads.

The Commission has held that, where a foreign railroad cor-

³³ In Matter of Jurisdiction over Water Carriers, 15 I. C. C. R. 205 (1909).

³⁴ St. Clair County v. Interstate Sand & Car Transfer Co., 192 U. S. 454, 24 Sup. Ct. 300, 48 L. ed. 518.

³⁵ For Power of Congress, see Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 29 L. ed. 158, 5 Sup. Ct. 826.

³⁶ Larabee Flour Mills Co. v. Mo. Pac. Ry. Co. (1906), 74 Kans. 808, 88 Pac. 72; affirmed in 211 U. S. 612, 29 Sup. Ct. 214.

poration comes into the United States to compete for traffic against American lines, it should be content to operate upon the same terms with its American competitors;³⁷ and that a foreign railroad corporation, such as the Grand Trunk Railway Company, carrying on traffic between the United States and Canada, was subject to the jurisdiction of the Interstate Commerce Commission as to its business in the United States.³⁸

But, while a foreign corporation engaged in traffic in the United States is subject to the Act as to such traffic, yet the jurisdiction of the Interstate Commerce Commission is necessarily limited to the United States, and clearly does not apply to a discrimination between places in a foreign country.³⁹

§ 63. Rail and Water Carriers Operating in Alaska.

The District of Alaska is not a Territory of the United States in the sense in which that phrase is used in the Act to Regulate Commerce, as amended, and the Interstate Commerce Commission has therefore no authority or jurisdiction over carriers engaged in the transportation of passengers or property within the District of Alaska.⁴⁰

³⁷ *Re Alleged Disturbances in Passenger Rates by Canadian Pacific Ry. Co.* (1898), 8 I. C. C. R. 71.

³⁸ *Re Investigation of Acts and Doings of the Grand Trunk Railway System* (1889), 3 I. C. C. R. 87, 2 I. C. R. 496.

³⁹ *Cist v. M. C. Rd. Co.* (1904), 10 I. C. C. R. 217.

⁴⁰ *In the Matter of Jurisdiction over Rail and Water Carriers Operating in Alaska* (1910), 19 I. C. C. R. 81. *Affirmed Humboldt Steamship Co. v. White Pass & Yukon Route, et al.* (1910), 19 I. C. C. R. 105.

For discussion concerning the status of Alaska, see the *Insular Cases*, *Downes v. Bidwell*, 182 U. S. 244, 45 L. ed. 1088, 21 Sup. Ct. Rep. 770; *Hawaii v. Mankichi*, 190 U. S. 197, 47 L. ed. 1016, 23 Sup. Ct. Rep. 787; *Dorr v. United States*, 195 U. S. 138, 24 Sup. Ct. Rep. 808, 49 L. ed. 128. See also *Rasmussen v. United States* (1904), 197 U. S. 516, 49 L. ed. 862, 25 Sup. Ct. 514.

CHAPTER VI.

CLASSIFICATION OF FREIGHT AND FREIGHT CLASSIFICATIONS.

SECTION

64. Classification most Practical Way of making Rates.
65. Nature of Freight Classifications and their Relation to Freight Tariffs.
66. Territorial Division of the United States for Classification Purposes.
67. Elements to be considered in fixing Classification.
68. Accuracy in Classification.
69. Classification must be Just and Reasonable.
70. Prosperity of Shipper does not determine Lawfulness of Classification.
71. Kind of Package used.
72. Comparison of Different Classifications.
73. Change of Classification should only be made upon Proof of Unjust Discrimination.
74. Classification as a Means of increasing Revenue.
75. Discrimination in Classification.
76. Interpretation of Technical Terms as used in Classification.
77. Classification of High Explosives.
78. Classification Committees.
79. Uniform Classification.
80. Publication, posting and filing Classifications.
81. Classification enjoined by the Act to Regulate Commerce.
82. Jurisdiction of the Interstate Commerce Commission over Classification.
83. Penalty for False Classification by Carrier.
84. Penalty for False Classification by Shipper.
85. Copies of Classifications to be preserved as Public Records in Custody of Secretary of Commission.
86. Certified Copies of Classifications as Prima Facie Evidence.

§ 64. Classification most Practical Way of making Rates.

The transportation of freight involves dealing with thousands of commodities presenting infinite variation in kind, use, weight, bulk, value, ease of handling and risk of carriage. Dividing the general commerce of the country into

classes is clearly necessary to any certain and convenient process of making rates, and to even an approximately just and reasonable apportionment of necessary transportation revenue among the kinds of traffic carried; in short, classification must be considered an indispensable feature of railroad operation. It is the foundation of rate-making.¹

The method of classification, which consists of grouping a large number of articles into each of several different classes, with different rates for the transportation of each class, has long existed in the operation of railroads.²

Freight classification is deemed by railroads convenient and essential to any practical system of rate-making.³

In making up a class by this method, articles of the same kind are usually grouped together in the same class, as far as this can be done; but, as the articles in each class are so very numerous, there is a very great diversity of such articles, and it results that there are generally but few things of the same kind that can be placed in one class. This is unavoidable, because the articles are so numerous, while the classes are but few. All articles embraced in a class are usually charged the rate of that class, whatever it may be. To carrier and shipper alike it indicates the amount of the rate charged.

This mode of making rates by classification is intended to be for the convenience of the railroad company, and also for the accommodation of the shippers, and long experience has shown that it is the best and most practical way yet devised for dealing with the subject.⁴

Classification is recognized as a necessary method of adjusting the burdens of transportation equitably upon the various articles of traffic, in view of differing circumstances and conditions, and *but* for the necessity of such adjustment,

¹ Eighth Annual Report of I. C. C. (1894).

² Report of Industrial Commission (1902), Volume 19.

³ *Coxe Bros. & Co. v. L. V. R. Co.* (1891), 4 I. C. C. R. 535; 2 I. C. R. 195; 3 I. C. R. 460; affirmed in *Schumacher Milling Co. v. C. R. I. & P. R. Co.* (1893), 6 I. C. C. R. 61; 4 I. C. R. 373.

⁴ *Pyle & Sons v. E. T. V. & G. R. Co.* (1888), 1 I. C. R. 767; 1 I. C. C. R. 473.

considerations based alone on weight and distance of haul would probably determine rates, except as modified by competition. This method, while securing practical uniformity, would probably deprive many articles which are now important factors in commerce of the benefit of transportation to distant points.⁵

§ 65. Nature of Freight Classifications and Their Relation to Freight Tariffs.

Classification is the basis of freight rates. When an article is presented to a common carrier for shipment, the classification is examined and the rate upon the article determined by the class to which such article is assigned.⁶ The classification and the tariff of rates are interdependent.⁷ The classification is a means of making a rate. It fulfills no purpose in itself. The tariff is the necessary complement of the classification. The one is useless without the other.⁸ The function of the classification is to segregate all possible commodities which may be shipped into the several numerical or literal classes which are named in the freight tariff.⁹

The classifications do not contain any rates whatsoever, but provide the class or rating which the articles mentioned therein shall take, the individual carriers publishing and filing the tariffs, which name the rates for the various classes of freight provided for in the classification, and especially referring to the particular classification by which the rates are to be governed.¹⁰

The freight traffic of the railways of the United States is carried under two general classes of schedules, commonly known as "class tariffs" and "commodity tariffs." The latter has reference to schedules applicable to such articles as

⁵ Schumacher Milling Co. v. C. R. I. & P. Ry. Co. et al., 6 I. C. C. R. 61, 4 I. C. R. 373.

⁶ Report of Industrial Commission (1900), Volume 4.

⁷ Noyes' "American Railroad Rates."

⁸ Ibid.

⁹ Report of Industrial Commission (1902), Volume 19.

¹⁰ Sixteenth Annual Report of I. C. C. (1902).

grain, lumber, coal, live stock, dressed beef, fertilizers, oil, etc., transported between sections of the country where articles have attained a commercial and shipping importance which has made necessary specific rules for their transportation differing from those covering classified traffic, as well as a somewhat lower scale of rates than is applied to the latter.

Class tariffs are arranged to show the rates of the respective classes contained in the freight classification. In the latter are found the great majority of articles carried by the railways, classified in accordance with the various elements that properly enter into the determination of freight charges. Under these also are found the commodities mentioned above, and, although exceptionally treated in certain sections as to rates, they are amenable to some rule of the classification. The rate-making foundation for all commodities is seen to lie largely in the freight classification. The development of the railroad business of the country has been followed by the enlargement and extension of freight classifications. The publications are now current guides to the shipping public, and have an enormous circulation. They are arranged in convenient manner, wherein may be found all commodities of commerce, described in every probable form of shipment with a rate reference for each description, together with the rules and regulations under which each will be accepted for carriage.¹¹

§ 66. Territorial Division of the United States for Classification Purposes.

¶ A. IN GENERAL.

The three leading classifications now practically governing the freight traffic of the United States are the "Official," "Southern" and "Western."¹²

In each of the three divisions of territory described below

¹¹ Seventeenth Annual Report of I. C. C. (1903).

¹² *Duncan v. A. T. & S. F. R. Co.* (1893), 4 I. C. R. 385; 6 I. C. C. R. 85; 3 I. C. R. 256.

exceptions to the principal classifications are made by State commissions and by individual roads for State or local traffic.¹³

¶ B. "OFFICIAL" CLASSIFICATION TERRITORY.

The Official Classification embraces that portion of the United States between Canada on the north, the Atlantic Ocean on the east, the Potomac and Ohio Rivers on the south and the Mississippi River on the west.¹⁴ This territory includes what is known as Central Freight Association Territory and Trunk Line Territory, both being governed by the Official Classification.¹⁵

The Central Freight Association Territory comprises the area west of Pittsburg, Pa., and Buffalo, N. Y., including the lower peninsula of Michigan and east of a line from Chicago, Ill., to St. Louis, Mo., the Mississippi River from St. Louis, Mo., to Cairo, Ill., and north of the Ohio River.¹⁶

Trunk Line Territory lies north of the Potomac River and east of Pittsburg, Pa., and Buffalo, N. Y.¹⁷

The first classification adopted by the railroads to control the territory above described as Official Classification Territory, was made contemporaneously with the going into effect of the Act to Regulate Commerce, presumably to comply with that Act, and took effect on April 1, 1887.¹⁸ Since then the classification has been regularly reissued either annually or semi-annually. The Official Classification contains six regular classes and three special classes in the form of rules, making practically nine classes in all.

¶ C. SOUTHERN CLASSIFICATION TERRITORY.

The Southern Classification is applied generally by roads

¹³ Third Annual Report of I. C. C. (1889).

¹⁴ C. H. & D. Ry. Co. v. I. C. C. (1907), 206 U. S. 142, 51 L. ed. 995, 27 Sup. Ct. 648, affirming 146 Fed. Rep. 559; Sixteenth Annual Report of I. C. C. (1903).

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

south of the Ohio River and east of the Mississippi River to the seaboard.¹⁹

The Southern Classification contains fourteen classes, six numeral, numbered 1 to 6, and eight literal classes lettered A. to H.

¶ D. WESTERN CLASSIFICATION TERRITORY.

The Western Classification governs in the territory north and west of Chicago, Ill., west of a line drawn from Chicago to St. Louis, and west of the Mississippi River from St. Louis, Mo., to New Orleans, La., on the Gulf of Mexico to the Pacific Ocean.²⁰

The Western Classification contains ten classes; five numeral, numbered 1 to 5, and five literal classes lettered A. to E.

§ 67. Elements to be considered in fixing Classification.

¶ A. IN GENERAL.

Rates are never measured exclusively by the weight of the articles carried, or by bulk, or by the cost to the carrier of transporting them, or by the value to the owner in having them transported; and if all of these and other considerations bearing upon the subject are taken into account in the determination of rates, as they habitually are, there is no rule by which it can be determined how much importance should be attached to any one, or any combination of them.²¹

The first step toward the imposition of rates for the transportation of merchandise is a classification of the articles which, it is supposed, may be offered for carriage, and the arranging of them into classes which are to bear different rates. In making this classification all the considerations that can properly bear upon it are supposed to be taken into account, and they are severally given such weight as the carrier believes it is proper to allow them under all the circumstances attending its own business, and all the business of

¹⁹ Third Annual Report of I. C. C. (1889).

²⁰ Ibid.

²¹ Fourth Annual Report of I. C. C. (1890).

the section, or of the interests that are served by his road. An important question always is, What is the probable cost of the carriage of the articles severally? and each is expected to be so classed that the rate it would bear would be such as to cover this cost, and also to afford some profit to the carrier. But this is only a general rule. There are many cases in which property may be expected to be offered for transportation, the weight of which, or the bulk, is so out of proportion to its value that it cannot possibly, if considered by itself, bear such charges for transportation as will leave any profit to the carrier, and must consequently be carried at a rate that falls below the point of fair profit or not be carried at all.²²

This well-known fact has led to the common saying that no traffic must be charged greater than it can bear—a saying intended to indicate the maximum, though often understood in quite an opposite sense. It is therefore found that, in every classification, many articles are so classified that the rates upon them will give to the carrier but very slight profit, and if the carrier were deliberately to refuse altogether to transport them, the refusal might, doubtless, in some cases be justified, if its own interest were exclusively to be considered. But the considerations that determine the classification in such a case look beyond the particular article, and relieve what would be an oppressive, and, perhaps, prohibitory burden, by imposing some portion thereof upon other articles that can better afford to bear it. In every classification, therefore, articles whose value is very great, in proportion to the bulk or weight, are classed high, in the expectation that the rates imposed upon them will pay, not merely the cost of transportation and a fair profit to the carrier, but will contribute also toward adequate remuneration for the transportation of such articles as cannot bear proportionate charges. Thus the cost of carriage to the carrier itself is no more a controlling consideration than is the value of the carriage to the owner of the property, and, when both are taken into ac-

²² Fourth Annual Report of I. C. C. (1890).

count, questions of a public character also have weight, inasmuch as it is important to make a great public agency reasonably profitable to its owners, and at the same time as useful as may be to the general public.²³

This method of classification has been so long continued, and so universal, that every well-informed person in a community understands that, made as it is for the purposes of rating, it is based upon an almost infinite variety of circumstances, having regard not merely to the interests of the carrier and the value of his service, but also to the interests of the parties and sections served, and to considerations which may change from day to day so as to demand a change in the proportionate rating. A rule that should measure charges by cost would work an entire revolution in the business of transportation, since it would no longer be practicable to make articles whose value was great in proportion to bulk or weight aid in the transportation of articles of a different nature, and the carrier would be compelled to demand upon the traffic in heavy and bulky articles such compensation as, in many cases, the traffic could not possibly bear. The long-haul commerce in some of the most important articles now transported for great distances would, under such a requirement, cease altogether, to the great detriment of the country at large, and with the probable result that many of the carriers now usefully serving the country, and in a prosperous condition, would be seriously crippled. Nothing more disastrous to the commerce of the country could possibly happen than to require the rating for railroad transportation to be fixed exclusively by this one rule. But the consequences would be similar if any other single test of a carrier's charges were to be applied, and if any two or three combined were made use of the probability of injury to the country, and of disaster to the roads, would be only a little farther removed. The carriers are entirely right in assuming that they best perform their duty to the public when they take into consideration, in making classification

²³ Fourth Annual Report of I. C. C. (1890).

and in fixing their rates, not merely the question of cost to themselves and of value to the owner of the property carried, but every consideration of a public nature which can fairly bear upon the question of public usefulness.²⁴

It is a sound rule for carriers to adapt their classification to the laws of trade.²⁵

Classification must be based upon a real distinction from a transportation standpoint.²⁶ The Commission will not regard a classification as scientific, or a difference in rates well based, which is altogether founded upon a distinction that has no transportation significance. Such a differentiation, if permitted and extended throughout the various classes of freight, would lead to an almost endless multiplication of rates, which could find no excuse save the use which might be made of the article transported.²⁷

The whole subject is so exclusively one of discretion with the railroad managers and the officers of associations who are brought in contact with the business itself, and with the people whom they serve, that they are not expected to defer to legal counsel upon questions of classification, but would assume that such a question was one altogether aside from his proper province, and would be more likely to consult with the merchants or manufacturers, or others who are to be the chief patrons of their roads, than with one whose business was to deal with legal questions, and not with questions of discretion and of purely business judgment.²⁸

When classification is made in the way explained it is very obvious that the rate imposed upon any single article of commerce, if it is challenged as unjust, cannot be taken up by itself, and its reasonableness determined, without regard to what is charged upon other articles which are subject to

²⁴ Fourth Annual Report of I. C. C. (1890).

²⁵ *Thurber et al. v. N. Y. C. & H. R. Rd. Co. et al.* (1890), 2 I. C. R. 742, 3 I. C. C. R. 473.

²⁶ *Stowe-Fuller Co. v. Pa. Co. et al.* (1907), 12 I. C. C. R. 216, affirmed in *Ft. Smith Traffic Bureau v. St. L. & S. F. Rd. Co.*, 13 I. C. C. R. 651.

²⁷ *Ibid.*

²⁸ Fourth Annual Report of I. C. C. (1890).

transportation by the same carrier. No article is rated independently. No one article is rated from considerations that pertain to itself alone; and to determine whether the rate is reasonable, it is necessary, in every instance, to go beyond the single article and consider the whole of classification and the whole business of the carrier under it. To challenge the charge for the carriage of a single article is to challenge to some extent the whole rate sheet, and calls for careful consideration of the question whether the rate to be charged to the one article is out of just proportion when all the circumstances and conditions which the railway officers must be supposed to have had in mind in making the classification and the rating are considered.²⁹

The classifications, as now constructed, have for their foundation the following elements: Whether commodities are crude, rough or finished; liquid or dry; knocked down or set up; loose or in bulk; nested or in boxes, or otherwise packed; if vegetables, whether green or dry, desiccated or evaporated; the market value and shippers' representations as to their character; the cost of service in general; length and direction of haul; the season and manner of shipment; the space occupied and weight; whether in carload or less than carload lots; the volume of annual shipments to be calculated; the sort of car required, whether flat, gondola, box, tank or special; whether ice or heat must be furnished; the speed of trains necessary for perishable or otherwise rush goods; the risk of handling, either to the goods themselves or other property; the weights, actual and estimated; the carrier's risk or owner's release from damage or loss;³⁰ the competitive element or the rates made necessary by competi-

²⁹ Fourth Annual Report of I. C. C. (1890).

³⁰ Eleventh Annual Report of I. C. C. (1897). See also *Myer v. C. C. C. & St. L. Rd. Co.*, 9 I. C. C. R. 78; Seventh Annual Report of I. C. C. (1903); Report of Industrial Commission (1900), Volume 4; *Schumacher Milling Co. v. C. R. I. & P. Ry. Co. et al.*, 6 I. C. C. R. 61; First Annual Report of I. C. C. (1887); *Page et al. v. D. L. & W. Rd. Co. et al.* (1896), 6 I. C. C. R. 548; *Procter & Gamble Co. v. C. H. & D. Ry. Co. et al.* (1903), 9 I. C. C. R. 440; *Harvard Co. v. Pennsylvania Co. et al.* (1890), 4 I. C. C. R. 212, 3 I. C. R. 257.

tion;³¹ hazardous and extra hazardous freight; liability to waste or injury in transit.³²

Upon such articles as dynamite, nitroglycerine, gunpowder, and all other explosives, a higher rate is charged than upon other articles of similar value, weight and size that are not explosives, on account of the risk connected with their transportation, arising particularly in the event of serious accident. In one case there is little, if any, risk to the carrier that the article transported will be destroyed in case of accident, or that, being destroyed itself, it will also contribute to the destruction of other freight, while in the other case there is very great risk; in case of serious accident explosives will not only be destroyed, but will contribute to the destruction of other large quantities of freight. This is one illustration. Another is, that freight which occupies a great deal of space must, to some extent, be charged for that space; or, if it be freight of very great value, it is deemed that a higher rate may be charged upon it than if it be freight of very little value, on account of the responsibility connected with the service performed and the corresponding benefit conferred to the owner of the freight by its transportation; or, if it be freight that is liable to waste or injury in transit, then a higher rate may be charged for its transportation than upon an article of similar value not liable to any waste or injury in transit, in consequence of the risk, care and responsibility assumed by the carrier.³³

As the freight rates of a railroad are laid for the purpose of obtaining revenue from its operation, it is but just and fair that they should be so distributed upon the different articles transported, as far as this can be done, as to bear upon all with relative equality. This being true, the considerations referred to above, as influencing carriers in making these rates, are just in themselves, although their application to different articles of freight is frequently difficult,

³¹ Seventeenth Annual Report of I. C. C. (1903).

³² *Pyle v. E. Tennessee, Va. & Ga. R. Co.* (1888), 1 I. C. C. R. 473, 1 I. C. R. 770.

³³ *Ibid.*

and must unavoidably require the exercise of great care to avoid occasional unjust discrimination.³⁴

All these are considerations which may justly affect rates, and therefore may be taken into account in classification.³⁵ These circumstances, though they may appear bewildering to the layman, are comparatively simple to the expert.³⁶

¶ B. VALUE OF SERVICE V. COST OF SERVICE PRINCIPLE IN FIXING CLASSIFICATION.

It was very early in the history of railroads perceived that, if these agencies of commerce were to accomplish the greatest practical good, the charges for the transportation of different articles of freight could not be apportioned among such articles by reference to the cost of transporting them severally, for this, if the apportionment of cost were possible, would restrict within very narrow limits the commerce in articles whose bulk or weight was large as compared with their value.³⁷

On the system of apportioning the charges strictly to the cost, some kinds of commerce which have been very useful to the country, and have tended greatly to bring its different sections into more intimate business and social relations, could not have existed at all, for the simple reason that the value at the place of delivery would not equal the purchase price with the transportation charges added. The traffic would thus be precluded, because the charge for carriage would be greater than it could bear. On the other hand, the rates for the carriage of articles within small bulk or weight concentrating great value would on that system of making rates be absurdly low; low when compared to the value of the articles, and perhaps not less so when the comparison was with the value of the service in transporting them.³⁸

³⁴ *Pyle v. East Tennessee, &c., R. Co.*, 1 C. C. R. 473, I. C. R. 770.

³⁵ First Annual Report of I. C. C. (1887).

³⁶ Seventeenth Annual Report of I. C. C. (1903).

³⁷ First Annual Report of I. C. C. (1887).

³⁸ *Ibid.*

It was, therefore, seen not to be unjust to apportion the whole cost of service among all the articles transported, upon a basis that should consider the relative value of the service, more than the relative cost of carriage. Such method of apportionment would be best for the country, because it would enlarge commerce and extend communication; it would be best for the railroads, because it would build up a large business, and it would not be unjust to property owners, who would thus be made to pay in some proportion to the benefit received. Such a system of ratemaking would in principle approximate taxation; the value of the article carried being the most important element in determining what shall be paid upon it.³⁹

Accordingly and for convenience and certainty in imposing charges, freight is classified; that which comes in one class being charged a higher proportional rate than that which is placed in another.⁴⁰

The articles or the interests that can least afford to bear such burdens are given the benefit of low rates and higher proportional rates are levied upon the articles and interests which would feel the burden less. This method of adjusting rates has been and is of very high value to the country; indeed, it may be said to be indispensable.

The business of a railroad company as a carrier of freight is to exchange for the people the products of different sections and countries, and this exchange, as to many commodities in a country so large as ours, or indeed in any considerable country, would be restricted to comparatively small sections if articles which are at once bulky and cheap and articles which in small compass comprise very great value were alike charged rates for transportation which disregarded the value as an element of estimation, or took it into account only so far as reasonable insurance against loss or injury might render prudent. Railroad managers very soon discovered therefore, that they could not measure their rates exclusively by the standard were cost of carriage

³⁹ First Annual Report of I. C. C. (1887).

⁴⁰ Ibid.

of the several kinds of traffic separately considered; but it was wise for themselves and best for the country that the cost of carriage be considered in the aggregate and that the rates which are to be the compensation for the service performed be then apportioned on special consideration of the value of the service to the kind of traffic severally. Such an apportionment would seldom be burdensome to articles of high value, but it would relieve cheaper articles from burdens, which, if apportioned strictly to the cost of the carriers of their transportation, would render carriage for considerable distance out of the question.⁴¹

¶ C. COMPARISON OF DIFFERENT ARTICLES IN FIXING CLASSIFICATION.

Where questions of classification and rates are involved as to one particular article of freight, it is often necessary to examine and consider the classification and rates upon other articles in which the same calculations in respect of value, bulk and expense of handling, and of carriage, would to a considerable extent enter; and for the purpose of such comparison it is not indispensably necessary that the articles should be competitive with each other, though if they are competitive then this feature must more strongly bring into view the fact of discrimination in rates, if there be such.⁴²

It has been repeatedly claimed by carriers and repeatedly held by the Commission that in the forming of a classification analogous articles should ordinarily be placed in the same class.⁴³ Manifestly in determining what freight rates shall be borne by different commodities an attempt should be made to obtain a fair relation between those commodities, and a classification which utterly ignores all considerations

⁴¹ Second Annual Report of I. C. C. (1888).

⁴² *Harvard Co. v. P. R. R. Co. et al.* (1890), 4 I. C. C. R. 212; 3 I. C. R. 257.

⁴³ *Warner v. N. Y. C. & H. R. R. Co.*, 4 I. C. C. R. 32, 3 I. C. R. 74; *Harvard Co. v. Penna. Co.*, 4 I. C. C. R. 212, 3 I. C. R. 257; *Page v. D. L. & W. R. Co.*, 6 I. C. C. R. 548.

of this kind or which utterly fails to give due weight to such considerations is unjust and unreasonable.⁴⁴

Unreasonable or unjust classification of a commodity is not shown by evidence of lower classification for articles widely dissimilar in the elements of risk, weight, bulk, value or general character. The proper method of comparison is the classification accorded by the carriers to analogous articles.⁴⁵

The elements of bulk, weight, value, and character of commodities are main considerations in determining approximately what freight articles are so analogous as to entitle them to the same classification.⁴⁶

¶ D. VALUE OF ARTICLES AS AN ELEMENT IN FIXING CLASSIFICATION.

In General.

An order of the Interstate Commerce Commission prohibited railway carriers from charging any greater compensation for the transportation of window shades of *any* description—whether the cheap article, worth \$3 per dozen, or the hand-decorated article, worth \$10 per pair—than the third-class rate, the rate charged for the transportation of the materials used in making window shades. *Held*, Upon petition to enforce compliance with the order, that the court would refuse to enforce such order, ignoring as it did the element of the value of the service in fixing the reasonable compensation of the carrier, and denying him any remuneration for additional risk.⁴⁷

While the value of the service of transportation and the

⁴⁴ *Myer v. C. C. C. & St. L. Ry. Co. et al.* (1901), 9 I. C. C. R. 78; see also *Myers, etc., v. Pa. Co. et al.* (1889), 2 I. C. C. R. 573; 2 I. C. R. 403.

⁴⁵ *Brownell et al. v. Col. & Cin'ti Mid. R. Co.* (1893), 5 I. C. C. R. 638; 4 I. C. R. 285.

⁴⁶ *Page v. D. L. & W. R. Co.* (1896), 6 I. C. C. R. 548, following *James & Abbott v. Can. Pac. R. Co.* (1892), 4 I. C. R. 274, 5 I. C. C. R. 612.

⁴⁷ *I. C. C. v. D. L. & W. R. Co. et al.* (1894), 64 Fed. Rep. 723, refusing to enforce order of Commission in *Page v. D. L. & W. R. Co.* (1894), 6 I. C. C. R. 148; 4 I. C. R. 525.

extent of the carrier's risk are measured by, among other things, the value of the property transported, and this is an important factor in rate making, it is to be noted that as shipments of goods of the same kind or class vary greatly in value, for the same weight, some being many times more valuable than others, a uniform rate per hundred weight for any commodity or class of traffic cannot bear the same proportion to the value of each shipment of such goods. The carrier can only be expected in establishing uniform class or commodity rates to take into account the estimated average value of shipments of the class or commodity to which the rates are applied.⁴⁸

If classification were based on value the number of classes in the classification would be too large and the refinement too subtle for practical operation. Classification is not an exact science; nor may the rating accorded a particular article be determined alone by the yardstick, the scales, and the dollar. The volume and desirability of the traffic, the hazard of the carriage, and the possibility or probability of misrepresentation of the article are considerations of prime importance in classification. At best it is but a grouping, and when the approximation resulting from it is not found to cause the exaction of an unreasonable or a discriminatory charge it will not be disturbed.^{48a}

Commercial Value of Article as distinguished from Intrinsic Value.

In arranging the classification of articles of commerce, their market value and the shippers' representations to the public as to their character may properly be taken into account in ascertaining the analogy they bear to other articles, and determining the class to which they justly belong. This is especially applicable to articles in which there is no free competition among producers and shippers. And carriers

⁴⁸ *Duncan v. A. T. & S. F. R. Co.* (1893), 4 I. C. R. 385, 6 I. C. C. R. 85.

^{48a} *Forest City Freight Bureau v. Ann Arbor R. R. Co.* (1910), 18 I. C. C. R. 205.

are not required to estimate the intrinsic value of freight as distinguished from its commercial value for purposes of classification and rates.⁴⁹

¶ E. COST OF PRODUCTION AS AN ELEMENT IN CLASSIFICATION.

The rate of compensation which railroad companies may lawfully receive for transporting services cannot be so limited that the shipper may in all cases realize actual cost of production. Charges for transportation service should have reasonable relation to the cost of production and to the value of the service to the producer and shipper, but shall not be so low on any traffic as to impose a burden on other traffic.⁵⁰

¶ F. VOLUME OF TRAFFIC AS AN ELEMENT IN FIXING CLASSIFICATION.

The volume of traffic supplied by an article for transportation is an element that may be considered in its classification, as a basis for rates that are reasonable both for carriers and shippers.⁵¹

The mere fact that one article is of more general use and therefore shipped in greater quantities than the other, when each as a rule is shipped in less than carload quantities, and of no considerable difference in bulk, weight, and value, and of no appreciable difference in expense of handling and of haul, constitutes in itself no reason why the first should receive a lower rate than the latter. In such a case the mere quantity, not measured by any recognized unit adapted to carriage, and lessening the expense of handling and carriage, cannot be allowed to affect rates in the transportation of property.⁵²

⁴⁹ Warner v. N. Y. C. & H. R. R. Co. (1890), 4 I. C. C. R. 32; 3 I. C. R. 74.

⁵⁰ In the Matter of Alleged Excessive Freight Rates and Charges on Food Products (1890), 4 I. C. C. R. 79, 3 I. C. R. 93.

⁵¹ Warner v. N. Y. C. & H. R. R. Co. (1890), 4 I. C. C. R. 32, 3 I. C. R. 74.

⁵² Harvard Co. v. P. R. R. Co. et al. (1890), 4 I. C. C. R. 212, 3 I. C. R. 257.

The general rule is this: "The greater the tonnage of an article transported, the lower should be the rate." No rule is more firmly founded in reason or more universally recognized by carriers.⁵³

When an article moves in sufficient volume and the demands of commerce will be better served, it is reasonable to give lower classification for carloads than that which is applied to less-than-carload quantities, but the difference in such classification should not be so wide as to be destructive to competition between large and small dealers. The justice of the claim for a lower rating on carload lots can only be determined by the facts in each case.⁵⁴

However, in the carriage of great staples, which supply an enormous business and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carriers are both necessary and justifiable.⁵⁵

¶ G. COST OF SERVICE AS AN ELEMENT IN FIXING CLASSIFICATION.

Classification of freight as actually effected in practice in the United States seems to be almost independent of considerations of cost, except in a most general way. Cost of course enters in, so far as the entire revenue obtained under the classification upon all kinds of commodities must jointly equal or exceed the expenditures; but, on the other hand, as applied in practice it is difficult to see how any other principle than "charging what the traffic will bear" receives consideration.⁵⁶

The Commission has stated that railway classification and

⁵³ *Tift v. Southern Railway*, 138 Fed. Rep. 753 (1905), affirmed in 206 U. S. 428, 51 L. ed. 1124, 27 Sup. Ct. Rep. 709.

⁵⁴ *Brownell et al. v. Col. & Cin. Mid. R. Co. et al.* (1893), 5 I. C. C. R. 638, 4 I. C. R. 285; *Thurber v. N. Y. C. & H. R. R. Co.* (1890), 2 I. C. R. 742, 3 I. C. C. R. 273, cited and reaffirmed.

⁵⁵ In the Matter of Alleged Excessive Freight Rates and Charges on Food Products (1890), 4 I. C. C. R. 79, 3 I. C. R. 93.

⁵⁶ Report of Industrial Commission (1902), Volume 19.

rates are not based upon cost of service; that in a general way that element must have consideration, but that commercial conditions, including characteristics of the traffic and the amount of probable gross and net revenue, are the really determining factors.⁵⁷

In one proceeding in passing upon the rates upon corn, the Commission said:⁵⁸

“What part of the whole burden of maintaining the roads must the corn pay? How much shall be apportioned to corn and agricultural products and how much to the machinery used? How much on the necessities and comforts used? We think no better rule applicable to the matter under investigation than that applied by the railroads themselves, in accordance with which rates are so adjusted as to secure the largest interchange of commodities. This rule is approved by its frequent application in the movement of western grain through the voluntary action of the roads. Put such a rate on corn as will encourage and warrant its movement if such a rate be fairly remunerative.”

¶ H. DIFFERENCE IN CLASSIFICATION BETWEEN CARLOAD AND LESS-THAN-CARLOAD QUANTITIES.

A classification of freight designating different classes for carload quantities and for less-than-carload quantities for transportation at a lower rate in carloads than in less than carloads is not in contravention of the Act to Regulate Commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by carload classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities.⁵⁹

⁵⁷ National Hay Association v. L. S. & M. S. Ry. Co., 9 I. C. C. R. 264.

⁵⁸ See note 55, supra.

⁵⁹ Thurber et al. v. N. Y. C. & H. R. R. R. Co. et al. (1890), 2 I. C. R. 742, 3 I. C. C. R. 473.

However, a difference in rates upon carloads and less than carloads of the same merchandise between the same points of carriage so wide as to be destructive to competition between large and small dealers, especially upon articles of general and necessary use, and which, under existing conditions of trade, furnish a large volume of business to carriers, is unjust and violates the provisions and principles of the Act.⁶⁰

¶ I. CLASSIFICATION OF ARTICLES IN LESS-THAN-CARLOAD LOTS.

Freight is carried either in carload lots, or in less-than-carload lots. This division of freight necessarily attends transportation by rail. Classification, within the meaning of the Act to Regulate Commerce, relates to these divisions separately. The classification of an article in less than carloads is not controlled by the classification of the same article in carloads, nor its reclassification by the maintenance of the relative difference in rates between the two; but on the contrary the classification or reclassification of an article in less-than-carload lots should be controlled by the relation it bears to other articles in less than carload lots—that relation to be determined by the degree in which, in comparison with such other articles, its handling and carrying is, or may be, affected by the cost of service, competitive and commercial conditions, volume, density, distance, value and risk of loss or damage. It is true that these elements must also be considered in determining the classification of articles in carload lots, but from a different standpoint. A given article of traffic may be more or less desirable when shipped in less-than-carload lots, than when shipped in carload lots. Bulk, weight, form, manner of packing, etc., may materially affect the classification of different articles to be carried in the same car, when they might have little or no weight in the classification of a single article to be carried in carload lots. A single car may carry many different articles and necessarily, the convenience, or inconvenience

⁶⁰ Ibid.

and cost of handling and carrying, must be considered in fixing the rate which each should bear and in determining the class to which each should be assigned, but the elements of disadvantage attending the combination of different articles in one shipment are eliminated from shipments of each article separately, in carload lots, and it follows that rates and classification must be controlled by the character of the shipment; that shipments which include and combine different articles of traffic in less-than-carload lots, require rates and classification necessary to meet the convenience, inconvenience, and cost of handling and carriage incident to such combination, which do not attend the shipment of a single article in carload lots. In other words, the classification of an article in less-than-carload lots should be based upon its relation to the other articles of carriage in less than carload lots, and not upon its relation to that article for carriage in carload lots.⁶¹

For example: The classification of soaps for carriage in less-than-carload lots should be based upon its relation to the other articles for carriage in less-than-carload lots, and not upon its relation to soap for carriage in carload lots.⁶²

¶ J. CHARACTER OF THE PACKAGE IN WHICH GOODS ARE SHIPPED AS AN ELEMENT IN CLASSIFICATION.

The character of the package or the manner in which goods are packed for transportation is commonly used as an element in arriving at the proper classification. The Commission has held that generally this principle of fixing classification is not unreasonable or in violation of the Act to Regulate Commerce.⁶³

¶ K. COMPETITION AS A FACTOR IN CLASSIFICATION.

Competition is an important factor in fixing classification.

⁶¹ I. C. C. v. C. H. & D. Ry. Co. (1905), 146 Fed. Rep. 559, affirmed in 206 U. S. 142, 51 L. ed. 995, 27 Sup. Ct. Rep. 648.

⁶² I. C. C. v. C. H. & D. R. Co., 146 Fed. 559, aff'd., 206 U. S. 142, 51 L. ed. 995, 27 Sup. Ct. 648.

⁶³ Trades League of Philadelphia v. P. W. & B. R. R. Co. et al. (1899), 8 I. C. C. R. 368.

Such competition includes not only that between carriers, but also that of a commodity produced in another section, and sometimes the competition of one kind of traffic with another.⁶⁴

¶ L. CARRIERS MAY ACCEPT SHIPPER'S DESCRIPTION OF ARTICLES IN FIXING CLASSIFICATION.

A manufacturer's description of an article to induce its purchase by the public also describes it for transportation, and carriers may accept his description for purposes of classification and rates. Carriers are not required to analyze freight to ascertain whether it is in fact inferior to the description or public representation under which it is sold, in order to give it a lower rate corresponding to its actual value.⁶⁵

§ 68. Accuracy in Classification.

¶ A. CLASSIFICATION OF FREIGHT IS NECESSARILY GENERAL.

An exact classification is impossible. Unless the number of classes is infinitely increased there must always be articles in respect to which it will be very difficult to determine into which of two classes they should fall.⁶⁶

In a freight classification such as the "Official," for example, which contains six general classes, it is manifestly impossible to bring together in each class only such articles as resemble each other in character, use, value, volume, bulk, weight, risk and expense of handling which have so often been referred to as governing conditions in freight classification. The best that can be done under such a scheme of classification is to place two or more articles possessing general similarity in the same class and where an article is so analogous to any other to put that article in the class containing

⁶⁴ National Hay Association v. L. S. & M. S. Ry. Co., 9 I. C. C. R. 264.

⁶⁵ Andrews Soap Co. v. P. C. C. & St. L. Rd. Co. et al. (1890), 4 I. C. C. R. 41, 2 I. C. R. 625, 3 I. C. R. 77.

⁶⁶ Rea v. M. & O. R. Co. (1897), 7 I. C. C. R. 43.

commodities which are most nearly related to it in general character and other essential respects.⁶⁷

In grouping a large number of articles in the same class and thereby giving them the same rate no two would be exactly alike in freight qualities. It is impossible to secure exact accuracy of treatment of all the varieties included in the class, and classification in its nature must be a compromise. More or less difference in their freight aspect can be shown between two articles in the same class.⁶⁸

As classifications and rates must necessarily be general, an injurious effect in some cases and to some interests is unavoidable; but so long as in the main they are satisfactory, the rule applies that the good of the greater number is paramount.⁶⁹

To demonstrate that there are occasional inequalities of rate upon some of the articles thus grouped together in one class as compared with others in that class is not to prove that the whole system is wrong, but simply that there is or may be some slight or occasional difference in the rate charged upon some one article in proportion to its value, bulk, or weight when compared with another, that inflicts no substantial wrong upon anyone, and is one of the mere incidents of the service by this method of transportation.⁷⁰

¶ B. MINUTENESS OF CLASSIFICATION IMPOSSIBLE.

No classification can be so minute as to conform to the differing varieties and conditions of traffic, and to separate different grades or densities of the same article into different classes with varying rates, even if it could be accomplished, would go far to defeat the real purpose of classification.⁷¹

⁶⁷ National Hay Association v. L. S. & M. S. Ry. Co., 9 I. C. C. R. 264.

⁶⁸ Procter & Gamble Co. v. C. H. & D. Rd. Co. et al. (1890), 4 I. C. C. R. 87, 3 I. C. C. R. 131.

⁶⁹ Thurber et al. v. N. Y. C. & H. R. Rd. Co. et al. (1890), 2 I. C. C. R. 742, 3 I. C. C. R. 473.

⁷⁰ Pyle & Sons v. E. T. V. & G. R. Co. (1888), 1 I. C. C. R. 767, 1 I. C. C. R. 473.

⁷¹ Planters' Compress Co. v. C. C. C. & St. L. Ry. Co. et al., 11 I. C. C. R. 382.

While there are exceptional instances requiring deviation from methods generally employed in constructing freight classification, it is manifest that to require the separation and grading into different classes with varying rates different grades of the same articles of freight would greatly complicate the work and go far to defeat the very purpose of classification, and even then it would be impracticable to apportion with mathematical exactness the burdens of transportation; the best result obtainable in this direction is reasonable and substantial approximation.⁷²

§ 69. Classification must be Just and Reasonable.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) makes it the duty of all common carriers subject to its provisions to establish, observe and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices, are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications and prohibits every unjust and unreasonable classification and declares such unlawful.

§ 70. Prosperity of Shipper does not determine Lawfulness of Classification.

Whether certain shippers have been prospering under the existence of a certain classification on their commodity does not determine the question whether the classification of such commodity is lawful. The aim of investigations under the provision of the Act to Regulate Commerce is not to ascertain how high classification or rates the affected industries will stand; the purpose of such investigations is to determine the duties of carriers and the rights of shippers and the public under the law.⁷³

⁷² Derr Mfg. Co. v. Penna. Rd. Co. et al., 9 I. C. C. R. 646.

⁷³ Page v. D. L. & W. R. Co. (1896), 6 I. C. C. R. 548, following James & Abbott v. Can. Pac. R. Co. (1892), 4 I. C. R. 274, 5 I. C. C. R. 612.

§ 71. Kind of Package used.

A shipper should not be subjected to unnecessary restrictions as to the kind of case or package he shall use.⁷⁴

§ 72. Comparison of Different Classifications.

The fact that different rates and classifications are in force in different sections of the country will not of itself warrant an extension of the lower rate and classification to the section where the higher rate and classification are applied. There must be proof of unlawful discrimination or disadvantage, or of unreasonably high rates, to procure an order directing changes in classification.⁷⁶ There is no presumption in favor of one classification as against another.^{76a}

§ 73. Change of Classification should only be made upon Proof of Unjust Discrimination.

An attempt to reform a classification by a selection of isolated cases and single classes, and changing them without a study of the entire scheme, would be dangerous. The entire effect of a proposed change can only be known by comprehending the relation of each particular article or class to the combined scheme. Therefore, a complainant asking a change in classification, with reference to a single group of articles, should be required to show a case of unjust discrimination or wrong to procure a change.⁷⁷

Classification, being the basis of rate-making, is supposed to be stable, and no change should be permitted to be made upon slight evidence, inasmuch as a change in a few commodities might disturb the whole classification scheme throughout an entire territory, with a resultant ill effect upon all commercial interests within its limits.

⁷⁴ Rhode Island Egg & Butter Co. et al. v. L. S. & M. S. Ry. Co. et al., 6 I. C. R. 176.

⁷⁶ Schumacher Milling Co. v. C. R. I. & P. Ry. Co. et al., 6 I. C. R. 61, 4 I. C. R. 373.

^{76a} Ibid.

⁷⁷ Ibid.

§ 74. Classification as a Means of increasing Revenue.

There are two ways in which carriers may increase their revenue: First, by increasing the rate *eo nomine*; second, by changing the classification.⁷⁸ This latter course is oftentimes resorted to.

§ 75. Discrimination in Classification.

See *Section 372, post*.

§ 76. Interpretation of Technical Terms as used in Classification.

Terms of art, or terms peculiar to a particular occupation or business used in classification, may sometimes require the evidence of experts for their full understanding, and testimony of persons connected with transportation, as to the understanding of such terms in transportation circles, is not competent, for the plain reason that it is not the meaning as understood in transportation circles that is in question, but the meaning accepted and acted upon in the business in which the articles are dealt in and made use of. The classification is supposed to inform the persons engaged in that business in what classes the articles they handle are placed for transportation purposes, and it would fail to do this if, instead of employing terms of designation in the sense familiar to themselves, it made use of them in a sense fixed upon by persons engaged in an occupation altogether different, and which might, to an expert in their own business, be strange and misleading.⁷⁹

§ 77. Classification of High Explosives.

Some freight classifications provide that high explosives will be "taken only by special agreement." Carriers are prohibited from carrying any traffic except under tariffs provided in the manner prescribed by law. It follows, therefore,

⁷⁸ Fourteenth Annual Report of I. C. C. (1900).

⁷⁹ *Hulburt v. L. S. & M. S. R. Co.* (1888), 2 I. C. C. R. 122, 2 I. C. R. 81.

that no traffic or transportation can be the subject of special agreement between carrier and shipper except as provided in Section 22 of the Act. If it is impracticable to classify high explosives in the classification, the statement must not be "taken only by special agreement," but must be "subject to regulations and rates in tariffs of the individual carrier," and each carrier must provide in its tariffs the rates and regulations applicable to such traffic.⁸⁰

§ 78. Classification Committees.

The various classifications are administered by committees appointed by the railroads operating within the respective territories. There is a separate committee for each of the three leading classifications. The "Official" classification is promulgated from New York City, the Western classification from Chicago, Ill., and the Southern classification from Atlanta, Ga. The various classification questions are presented to these committees either at their home city or at some designated place of hearing. The various matters are voted on and passed by a majority vote, after which the classification is then published, either by way of supplement or a revision of the classification then in force.

§ 79. Uniform Classification.

¶ A. IN GENERAL.

"In the Eleventh Annual Report of the Interstate Commerce Commission to Congress the matter of a uniform classification was treated of at considerable length, and it was stated that a single classification was regarded as essential to insure compliance with the law and to promote greater economy in the administration and conduct of transportation. The Commission also expressed the view that it was of interest and value to the carriers themselves.

It was further pointed out that the present diversity, due to the various classifications, results in many discriminations and losses, and that there is no single step that could be

⁸⁰ Rule 65, Tariff Circular 17-A.

taken by the carriers which would go so far to insure the establishment of stable rates as the adoption of a single and comparatively fixed classification. The situation, as disclosed in the report referred to, of the lack of progress that had been made by the carriers in this connection in the preceding years, led the Commission to suggest that it be authorized and required to prepare such a classification, and to indorse the action which was proposed by a bill then pending in the Senate.⁸¹

"In reaching these conclusions, the Commission was not unmindful of the work involved in making uniform the then existing classifications, and took occasion to say: 'To establish theoretical, and, to some extent, arbitrary classes, whether they number six or twenty-five, and to thereby provide rates for all articles which yield the necessary revenues for the carriers, do full justice to local interests and the whole country, and satisfy the reasonable demands of shippers everywhere, is a task of great magnitude, and presents many obvious and serious difficulties; * * * in the nature of the case there must be concessions and compromises, for it would be too much to expect that such a change in transportation methods could be effected without some friction and some losses.' It was also stated that 'it is evident the carriers themselves, by mutual concessions and through voluntary and harmonious action, can accomplish this reform with much less losses, embarrassment and friction than will presumably result if Congress or some delegated tribunal establishes a classification of them.'⁸²

"The foregoing briefly sets forth the views of the Commission as to the desirability of a uniform freight classification; it also indicates the extent of the undertaking, as well as the further view repeatedly expressed by the Commission, that the task is one which would be primarily left to the carriers to work out."⁸³

⁸¹ Twenty-First Annual Report of I. C. C. (1907).

⁸² Twenty-First Annual Report of I. C. C. (1907).

⁸³ Ibid.

“That a uniform classification is entirely practicable is demonstrated by the great advance which has already been made toward uniformity, and by the fact that such progress could not have been attained without the subordination of business and carrying interests in various localities to the commercial and transportation conveniences of the country at large. The accomplishment of uniform classification involves only a continuance of the work upon the line of rendering individual interest and local advantage subservient to the general welfare. That this will not require any real sacrifice or injury is proven by the absence of any proposition to retrace a single step in the work which has been done toward securing uniformity; on the contrary, all interested parties concede the great desirability, and most commercial interests urge the necessity of a single classification.”⁸⁴

“The governing considerations in the construction of a classification are: first, the number of classes which the classification shall contain, and second, how the different articles of commerce shall be distributed among these classes according to their character, weight, value, bulk, ease of transportation and risk of carriage. The rules for determining similarity of freight articles in these particulars ought to be common to all sections, and not varied, as they now are, to accommodate carrying customs or transportation methods in different sections. One of the greatest benefits which will result from a uniform classification will be the evolution of admittedly just, general rules for determining the relative classification of commodities.”⁸⁵

The Commission has reported to Congress that “It is interesting to note that definite steps have been taken by the carriers in different sections of the country, now operating under the three principal freight classifications, to establish a standard classification which shall take the place of existing separate classifications. This work is now well in hand, the carriers from the different classification territories having assigned persons especially qualified for the work as

⁸⁴ Eighth Annual Report of I. C. C. (1894).

⁸⁵ Eighth Annual Report of I. C. C. (1894).

their representatives on a committee which has been organized embracing the combined interests. A committee of executive officers of the same interests has also been formed, which will exercise supervision of the work to be performed by the committee first named. From the foregoing movement, as well as from the information which has reached the Commission, it is quite evident that the carriers are impressed with the desirability of harmonizing the conflicting features of the existing classifications for the convenience of the public, as well as to bring about uniformity in the provisions of a classification, which are essentially direct factors in the charges for transportation, as also the stability in the latter, which will necessarily follow under these arrangements; and it may be said that, under the organization which has been perfected by the carriers, material progress may be expected in connection with this important matter."⁸⁶

On the contrary, however, while the nearest approximation to uniformity of classification is desirable, all agree that great caution should govern the attempts to bring it about. The Commission has said,⁸⁷ "to force it at once was undesirable," and "while one dealer might be greatly benefited another might be ruined," and that "the final adjustment of a uniform classification must necessarily be the arrangement of a number of compromises." And it said in *Pyle v. East Tennessee, V. & G. R. Co.*^{87a} that occasional inequalities of rates, and slight and occasional differences in the rates charged would not prove that the whole system is wrong and that "when comparison is attempted to be made of classifications and rates, different conditions of transportation can not be ignored."

¶ B. COMMISSION WILL RECOGNIZE EFFORTS OF CARRIERS TO ARRIVE AT UNIFORMITY OF CLASSIFICATION.

When all the interstate carriers of the country, working

⁸⁶ Twenty-First Annual Report of I. C. C. (1907).

⁸⁷ *Schumacher Milling Co. v. C. R. I. & P. R. Co.* (1893), 4 I. C. R. 373; 6 I. C. C. R. 61.

^{87a} *Pyle v. East T. V. & G. R. Co.* 1 I. C. R. 770, 1 I. C. C. R. 473.

through a committee selected by them for that purpose, are endeavoring to reach a uniform classification of freight, instead of having the various different and conflicting classifications, it being apparent to the Commission that such uniform classification is a result that is greatly in the public interests, as well as in the interest of the carriers, and that has often been recommended by the Commission to the carriers, the Commission will not embarrass, delay or retard the carriers in this work by instituting investigations of its own under the twelfth section of the Act to Regulate Commerce, involving the classification of a few enumerated articles transported from and to an extended area of country, but, unless a formal complaint is made against the carriers in regard to such matter, and a hearing of it pressed to a determination by the parties, the Commission will wait a reasonable time to see the result of the effort being made by the carriers in their efforts to arrive at a uniform classification.⁸⁸

§ 80. Publication, posting and filing Classifications.

See *Chapter 30, post*.

§ 81. Classification enjoined by the Act to Regulate Commerce.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) makes it the duty of carriers subject to its provisions to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices, are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications.

§ 82. Jurisdiction of the Interstate Commerce Commission Over Classification.

¶ A. POWER TO ORDER CHANGES IN CLASSIFICATION OF COMMODITIES.

The Act to Regulate Commerce (*as amended June 18, 1910*)

⁸⁸ *McMillan & Co. v. Western Classification Committee*, 3 I. C. R. 232.

authorizes and empowers the Commission, whenever, after full hearing on a complaint made as provided in Section 13 of the Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), it shall be of the opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of the Act for the transportation of property as defined in the first section of the Act, or that any individual or joint *classifications*, regulations or practices whatsoever of such carrier or carriers subject to the provisions of the Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of the Act, to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what *individual or joint classification*, regulation or practice is just, fair, and reasonable, to be thereafter followed; and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, *and shall adopt the classification* and shall conform to and observe the regulation or practice so prescribed.⁹¹

Classification determines the relation of rates as between commodities, not the rate itself, and when a commodity is transferred from a higher to a lower class the revenues of the carrier are not necessarily diminished, since it may advance the rates applicable to those classes.⁹² An order of the Commission requiring a carrier to cease and desist from enforcing a classification of specified articles higher than the

⁹¹ Act, Section 15, (as amended June 18, 1910).

⁹² Myer v. C. C. C. & St. L. Ry. Co. et al. (1901), 9 I. C. C. R. 78; see also Myers, etc., v. Pa. Co. et al., 2 I. C. R. 403.

classification which, upon the facts, it has found to be lawful, is not prescribing a rate for the future.⁹³

¶ B. ORDER OF COMMISSION SHALL CONTINUE IN FORCE NOT EXCEEDING TWO YEARS UNLESS SUSPENDED OR SET ASIDE BY COMMISSION OR COURT.

The statute provides that all orders of the Commission relating to classification of commodities shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction.^{93a}

¶ C. COMMISSION MAY UPON ITS OWN INITIATIVE ENTER UPON HEARING CONCERNING PROPERTY OF NEW CLASSIFICATION.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, or charge, or *any new individual or joint classification*, or any new individual or joint regulation or practice affecting any rate or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, classification, regulation or practice.⁹⁴

¶ D. COMMISSION MAY NOT ESTABLISH CLASSIFICATION IN CONNECTION WITH STREET ELECTRIC PASSENGER RAILWAYS.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that the Commission shall not establish any classification between street electric passenger railways not engaged

⁹³ Ibid.

^{93a} Act, Section 15, (*as amended June 18, 1910*).

⁹⁴ Ibid.

in the general business of transporting freight in addition to their passenger and express business and railroads of a different character.⁹⁵

¶ E. COMMISSION NO AUTHORITY TO ESTABLISH CLASSIFICATION WITH INDEPENDENT WATER CARRIERS.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that the Commission shall not have the right to establish any classification when the transportation is wholly by water, and that any transportation by water affected by that Act shall be subject to the laws and regulations applicable to transportation by water.^{95a}

¶ F. POWER OF COMMISSION TO RESTRAIN ENFORCEMENT OF NEW INDIVIDUAL OR JOINT CLASSIFICATION PENDING INVESTIGATION.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*), reads as follows: "Whenever there shall be filed with the Commission * * * any new individual or joint classification, * * * the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such * * * classification, * * *; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such * * * classification, * * *, but not for a longer period than one hundred and twenty days beyond the time when such * * * classification. * * * would otherwise go into effect; and after full hearing whether completed before or after the * * *, classification, * * *

⁹⁵ Ibid.

^{95a} Ibid.

goes into effect the Commission may make such order in reference to such * * *, classification, * * * as would be proper in a proceeding initiated after the * * *, classification, * * * had become effective: *Provided*, That if any such hearing cannot be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period of not exceeding six months."

§ 83. Penalty for False Classification by Carrier.

See *Section 760, post*.

§ 84. Penalty for False Classification by Shipper.

See *Section 761, post*.

§ 85. Copies of Classifications to be preserved as Public Records in Custody of Secretary of Commission.

The statute provides that copies of classifications filed with the Commission in accordance with the provisions of the Act shall be preserved as public records in the custody of the Secretary of the Commission.⁹⁶

§ 86. Certified Copies of Classifications as Prima Facie Evidence.

The Act provides that the copies of classifications filed with the Commission and in custody of the Secretary of the Commission, shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of such classifications, made public records as aforesaid, certified by the Secretary under the seal of the Commission shall be received in evidence with like effect as the originals.⁹⁷

⁹⁶ Act to Regulate Commerce, Section 16 (as amended June 18, 1910).

⁹⁷ Ibid.

CHAPTER VII.

FREIGHT RATES AND CHARGES.

SECTION

87. Different Kinds of Rates defined and Their Usage.
88. Duty of Carriers to initiate Rates.
89. Factors and Elements to be considered in Rate-Making.
90. Use of Classification in Rate-Making and Elements to be considered in fixing Same.
91. Methods of advancing Rates.
92. Rates must be Just and Reasonable.
93. Reasonableness of Rates.
94. Regulations and Practices affecting Rates.
95. Comparison of Rates.
96. Rates must apply according to Movement.
97. Joint and Through Rates.
98. Rates are not nullified by Failure of Carriers to Agree upon Division Thereof.
99. Discrimination in Rates for Transportation of Freight.
100. Free and Reduced-Rate Transportation of Property.
101. Publication, posting and filing of Freight Rates and Charges.
102. Published Rates not to be deviated from.
103. Offering, granting, giving, soliciting, accepting or receiving any Rebate from Published Rate declared to be a Misdemeanor and Penalty Therefor.
104. Maintenance of Rate reduced after Complaint filed with the Interstate Commerce Commission.
105. Effect of Private Agreement between Carrier and Shipper concerning Charges for Transportation.
106. Performance of Transportation Service without Rates on File with the Interstate Commerce Commission.
107. Territorial Divisions of the United States for Rate-Making Purposes.
108. Construction of Rates from Percentage-Basis-Territory Points to Eastern Cities.
109. Jurisdiction of Interstate Commerce Commission Over Freight Rates and Charges.
110. Duty of Carriers to quote Rates to Shippers.

§ 87. Different Kinds of Rates defined and Their Usage.

¶ A. LOCAL RATE.

Rates charged between points located upon the same road are designated as "local rates." The changes in such rates are, as a rule, less frequent than in joint rates.¹

¶ B. JOINT RATE.

The term "joint rate" is construed to mean a rate that extends over the lines of two or more carriers and that is made by joint agreement between such carriers.² A joint rate is simply a through rate, every part of which has been made by express agreement between the carriers making the through route.³

¶ C. THROUGH RATE.

A through rate is the rate applicable from the point of origin of a shipment to its destination. That rate may be (a) a local rate where both points are located upon the line of one road or a combination of the separately established local rates of such road, or, (b) a joint rate over a through route composed of two or more roads which have agreed to a joint rate,⁴ or, (c) a combination of separately established rates applicable on through business over a through route which does not enjoy a joint rate.⁵ A through route is a continuous line of railway formed by an arrangement express or implied, between connecting carriers. It must have a rate for every service it offers, and as the route is a new unit, so its rate for every service is a unit even though it be divided between the several carriers ar-

¹ Sixteenth Annual Report of I. C. C. (1903).

² Tariff Circular 17-A.

³ In the Matter of Through Routes and Through Rates (1907), 12 I. C. C. R. 164.

⁴ Laning-Harris Coal & Grain Co. v. Mo. Pac. Ry. Co. et al. (1908), 13 I. C. C. R. 154.

⁵ Ibid.

ranging themselves into the through route. Where a *through route* has been formed the rate charged is a *through rate*.⁶

¶ D. PROPORTIONAL RATES.

A proportional rate is a proportion of a through rate which is lower between given points when the traffic has undergone transportation before reaching the first point, or is to be further transported after reaching the second, than the rates charged on like traffic which originates at one of such points and terminates at the other.⁷ It is a part of or a remainder of the through rate.⁸

¶ E. ARBITRARIES.

The term *arbitrary* is a technical term expressing a difference which does not change with the through rate.⁹ A proportion of a through rate charged by a carrier upon a long haul of the freight, whether it be called an "arbitrary" or a "percentage," may well be considerably less than a local rate charged by the same carrier for the same distance.¹⁰

¶ F. DIFFERENTIALS.

Nothing is more certain concerning transportation in this country, either as to cost of service to the carrier or value of service to the shipper, than that as the mileage increases the total cost increases, but the cost per ton per mile decreases. This is true, although it cannot be stated in exact mathematical terms. It follows, and with particular force as applied to grouped points of origin and grouped points

⁶ In the Matter of Through Routes and Through Rates (1907), 12 I. C. C. R. 164.

⁷ In the Matter of Form and Contents of Rate Schedules, 4 I. C. R. 701.

⁸ Kansas City Transportation Bureau, etc., v. A. T. & S. F. Ry. Co. et al., 16 I. C. C. R. 195.

⁹ Boston Chamber of Commerce v. L. S. & M. S. R. Co. et al. (1888), 1 I. C. C. R. 436; 1 I. C. R. 754.

¹⁰ New Orleans Cotton Exchange v. Ill. Cent. Rd. Co. et al. (1890), 3 I. C. C. R. 534; 2 I. C. R. 777.

of destination, that differentials either above or below the rates from any given point become less and less important as distance of ultimate destination increases. Stated in other words, differentials diminish with increasing distance and vanish when the mileage on which the differential is based becomes inconsiderable in proportion to the total mileage from basing point to destination.¹¹

¶ G. CLASS RATES.

The making of railroad tariffs is simplified by classifying the great number of articles commonly offered for transportation and fixing rates for the different classes instead of making a separate rate for each commodity.¹²

The various articles are grouped together in what is known as a classification which shows the respective classes in which they stand. These various classes are designated by either numbers or letters or a combination of both. The classification itself contains no rates; to obtain the rates it is necessary to refer to the rate schedule or tariff which contains a graduated scale of rates to correspond with the groups shown in the classification. These rates are called class rates to distinguish them from commodity or special rates.

The Commission is disposed to encourage the making of class rates wherever practicable, because of their tendency to uniformity and stability.¹³

¶ H. COMMODITY RATES.

Commodity rates are usually, if not invariably lower than the class rates, being special rates presumably established on account of peculiar circumstances and conditions.¹⁴

¹¹ Williams Co. v. V. S. & P. Ry. et al. (1909), 16 I. C. C. R. 482.

¹² First Annual Report of I. C. C. (1887); see La Crosse M. & J's Union v. C. M. & St. P. Ry. Co. et al. (1888), 1 I. C. C. R. 629, 2 I. C. R. 9.

¹³ Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. et al. (1909), 17 I. C. C. R. 30.

¹⁴ Indianapolis Frt. Bureau v. C. C. C. & St. L. Ry. Co. et al. (1909), 15 I. C. C. R. 367.



They are usually made upon coarse, cheap articles which are not of sufficient value to bear the numbered class rates. For example, they are made on iron articles, brick, lumber, clay, cement, stone, salt, coal, etc.¹⁵

Commodity rates as a rule are not as stable as class rates. The only purpose of making a commodity rate is to take the commodity out of the classification; therefore, where there is both a class and a commodity rate contemporaneously in effect, the commodity rate is the lawful rate to be applied and if the carrier does not desire to apply it on all shipments it must be cancelled.¹⁶

The Commission discourages the establishment of commodity rates on account of their lack of uniformity and stability. It is only in cases where it clearly appears that the inclusion of a given article in a class results in unreasonable charges, and a lower rate will not meet the demands of justice, that commodity rates are required to be established.¹⁷

In every instance where a commodity rate is named in a tariff upon a commodity and between specified points such commodity rate is the lawful rate and the only rate that may be used with relation to that traffic between those points, even though a class rate or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic out of the classification and out of the class rates between the points to which such commodity rate applies.¹⁸

It should be noted, however, that while a commodity rate may be a *different* rate from a class rate, it does not necessarily follow that it must be a lower rate, nor is it obligatory upon the carrier to thereby establish a lower rate.¹⁹

¹⁵ New York Board of Trade & Transp. v. Pa. Rd. Co. (1891), 3 I. C. R. 417.

¹⁶ Rule 84, Con. Rul. Bul. No. 4 (June 9, 1908).

¹⁷ Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. et al. (1909), 17 I. C. C. R. 30.

¹⁸ Rule 7, Tariff Circular 17-A.

¹⁹ Wheeling Corrugating Co. v. B. & O. Rd. Co. et al. (1910), 18 I. C. C. R. 125.

¶ I. RATES FOR MIXED SHIPMENTS.

Class rates or commodity rates may be made for specified mixed shipments and will be the lawful rates for such mixtures, even though certain parts of the mixtures are covered by class or commodity rates when shipped separately.^{19a}

¶ J. BASING-POINT SYSTEM OF RATE-MAKING.

The system of rate making, commonly known as the "basing point" or "trade center" system, which is prevalent throughout the South was generally operative at the time the Act to Regulate Commerce took effect and is still employed.

This system is described as follows: Certain large cities and towns situated on the coast, at interior river points, and at railroad junctions are called competitive and receive quite low rates on all interstate traffic; all other stations are called local and are charged much higher rates. The rates at local points are made by adding to the competitive rate at the nearest competitive point the local rate from that point. These local rates are ascertained upon a short distance mileage basis, frequently using the table established or approved by State Railroad Commissioners. The intermediate or local stations are "given the benefit" of what is called the lowest combination—that is, if the rate to the competitive point, plus the local rate to the given point beyond, exceeds the rate to the next competitive point plus the local rate back to the given point, the latter rate is taken.²⁰

Competition between rival lines gives rise to these "basing points" or "trade centers" and justifies the making of through rates to contiguous points by combining the through competitive rates with the noncompetitive rates

^{19a} See note 18, *supra*.

²⁰ *Harwell v. C. & W. R. R. Co.* (1887), 1 I. C. C. R. 236; 1 I. C. R. 631; *Davenport v. Southern Rwy. Co. et al.* (1906), 11 I. C. C. R. 650; *Board of Trade v. N. C. & St. L. Ry. Co.* (1900), 8 I. C. C. R. 503. See *Re L. & N. R. Co.*, 1 I. C. C. R. 84; 1 I. C. R. 278; *Martin v. C. B. & Q. R. Co.*, 2 I. C. C. R. 46; 2 I. C. R. 32; *Re Tariffs and Classifications of A. & W. P. R. R. Co.*, 3 I. C. C. R. 24; 2 I. C. R. 461.

to such points; and when not determined upon arbitrarily or with improper motives are not in violation of the Act to Regulate Commerce.²¹

§ 88. Duty of Carriers to initiate Rates.

Under the law carriers must initiate rates, and so long as they do not abuse the right conferred upon them by statute, the Commission is not justified in penalizing them.²²

Inasmuch as railways are authorized in establishing in the first instance their transportation charges, the presumption of right doing attaches to their acts in the establishment of those rates.²³

§ 89. Factors and Elements to be considered in Rate-Making.

The following are the most important elements and factors to be considered in fixing a freight rate. See also considerations as to the "*Reasonableness of Rates*," Section 93, *post*.

¶ A. VALUE OF SERVICE TO THE SHIPPER AS AN ELEMENT.

The value of the service to the article transported is an element of highest importance in fixing rates.²⁴ The value of the service to a shipper in a general sense is the ability to reach a market and make his commodity a subject of commerce. In this sense the service is more valuable to a man who transports a thousand miles than to a man who transports a hundred miles, so that distance is an element of the value of service. In a more definite and accurate sense it consists in reaching a market at a profit, being in effect

²¹ *I. C. C. v. Ala. Midland Ry. Co. et al.* (1895), 69 Fed. Rep. 227; affirmed 74 Fed. Rep. 715; 21 C. C. A. 51; 168 U. S. 144; 18 Sup. Ct. Rep. 45; 42 L. ed. 414; *L. & N. Rd. Co. v. Behlmer* (1900), 175 U. S. 648; 20 Sup. Ct. Rep. 209; 44 L. ed. 310; *Charlotte Shippers' Association v. Southern Ry. Co. et al.* (1905), 11 I. C. C. R. 108.

²² *Foster Lumber Co. v. A. T. & S. F. Ry. Co. et al.*, 15 I. C. C. R. 56; *National Hay Association v. L. S. & M. S. Ry. Co. et al.*, 9 I. C. C. R. 264.

²³ *Banner Milling Co. et al. v. N. Y. C. & H. R. Rd. Co. et al.*, 14 I. C. C. R. 398.

²⁴ *Thurber et al. v. N. Y. C. & H. R. Rd. Co. et al.* (1890), 3 I. C. C. R. 473; 2 I. C. R. 742.

what the traffic will bear to be remunerative to the producer or dealer. If the charge for service leaves no profit to the shipper the traffic is worthless and necessarily ceases.²⁵ In the case of coal for example, the intrinsic value of the service to a miner forty or fifty miles farther from the common market is greater in proportion to its distance than to the nearer mine, but relatively on account of cost of production, or a somewhat inferior quality, it may be of no greater. If the remote mine cannot sell at more profit the service has the same value for it and the traffic will bear no more.²⁶

Rates should bear a fair and reasonable relation to the antecedent cost of the traffic as delivered to the carrier for transportation, and the average market price the freight will command; but the burden is upon a party invoking this rule to establish by satisfactory evidence such antecedent cost and market value.²⁷

Where the market price yields but a scant return for the labor and expense of production the cost of transportation needs to be as moderate as may be consistent with justice to the carrier.²⁸ See "*Value of Service v. Cost of Service Principle in Fixing Classification*," Section 67, Paragraph B., *ante*, for full consideration.

¶ B. COST OF SERVICE TO THE CARRIER.

In fixing upon a rate or a rate adjustment a carrier may always consider the cost of service, and that factor should have great influence with the Commission in passing upon the reasonableness of the carrier's action.²⁹

²⁵ Imperial Coal Co. v. P. & L. E. Rd. Co. et al. (1889), 2 I. C. C. R. 618; 2 I. C. R. 436.

²⁶ Ibid.

²⁷ Loud v. South Carolina Ry. Co. et al. (1892), 5 I. C. C. R. 529; 4 I. C. R. 205; citing Delaware State Grange v. N. Y. P. & N. Rd. Co. et al. (1891), 4 I. C. C. R. 588; 3 I. C. R. 554.

²⁸ Newland et al. v. Northern Pacific Rd. Co. et al. (1893), 6 I. C. C. R. 131; 4 I. C. R. 474.

²⁹ Business Men's League v. A. T. & S. F. Ry. Co. et al. (1902), 9 I. C. C. R. 318.

While, however, in determining rates to be charged for transportation, cost of service is one of the principal elements to be considered, yet it is not to be considered alone as controlling.³⁰ Such cost can be reached approximately but not accurately enough to make it controlling.³¹

On that basis some articles, on account of relation of commercial value to cost of service though furnishing a large volume of traffic, would not be carried at all, and others of high commercial value would have a very low rate, without increasing tonnage.³²

The public interests are not to be subordinated to those of carriers, and require proper regard for the value of the service in the apportionment of all charges upon traffic.³³

¶ C. VALUE OF SERVICE V. COST OF SERVICE PRINCIPLE IN FIXING RATES.

See *Section 67, Paragraph B, ante.*

¶ D. VALUE OF THE COMMODITY TRANSPORTED AS AN ELEMENT.

The element of value of the article transported forms a proper consideration to be taken into account in the establishment of a rate, since the greater the value the greater the carrier's liability as an insurer of the freight.³⁴

While, however, value is a most important element to be considered in fixing rates, it plainly cannot be made an arbitrary standard independent of all other considerations.³⁵

In determining what the relation should be between the

³⁰ *Glade Coal Co. v. B. & O. Rd. Co.* (1904), 10 I. C. C. R. 226; *Thurber et al. v. N. Y. C. & H. R. R. Co. et al.* (1890), 3 I. C. C. R. 473; 2 I. C. R. 742; *Society of A. F. & O. H. v. U. S. Ex. Co.*, 12 I. C. C. R. 121.

³¹ *I. C. C. v. C. G. W. Ry. Co.* (1905), 141 Fed. Rep. 1003, affirmed 209 U. S. 108, 52 L. ed. 705, 28 Sup. Ct. 493.

³² *Thurber et al. v. N. Y. C. & H. R. Rd. Co. et al.* (1890), 3 I. C. C. R. 473, 2 I. C. R. 742.

³³ *Ibid.*

³⁴ *Howell et al. v. N. Y. L. E. & W. R. Co.*, 2 I. C. R. 163.

³⁵ *Grain Shippers' Association, etc., v. Ill. Cent. Rd. Co. et al.*, 8 I. C. C. R. 158.

rates charged for transporting two different freight articles value is often an important factor, but this is not alone because of the greater risk connected with the transportation of the more valuable article. Improvements made during recent years in the road-beds and equipment of carriers have rendered the item of risk in many cases of little consequence. The value of the article is important, principally, because of its bearing upon the value to the shipper of the transportation service, and the value of the service is, and has always been considered one of the important elements to be considered when fixing the rates to be charged for transportation.³⁶

In establishing uniform class or commodity rates the carrier can only be expected to take into account the estimated average value of shipments of the class or commodity to which the rates are applied.³⁷

When the carrier has established a reasonable rate for the transportation of a given commodity it is not believed it can be required to change that rate to accord with the differing values of the same commodity produced by different shippers—in other words, to equalize natural business conditions. If this were so, that might be made to fluctuate not only to meet the value of the commodity, but the executive or business ability of each individual producer.³⁸

¶ E. RISK AS AN ELEMENT.

To the extent that loss or damage is peculiar to a particular kind of traffic, that fact may be properly recognized in fixing the rate.³⁹ While carriers may adjust their

³⁶ *Chicago Live Stock Exchange v. C. G. W. Ry. Co. et al.* (1905), 10 I. C. C. R. 428; see also *Farrar v. Southern Ry. Co. et al.* (1906), 11 I. C. C. R. 632; *Anthony v. P. & R. Ry. Co. et al.*, 14 I. C. C. R. 581 (1908); *Colorado Fuel & Iron Co. v. Southern Pacific Co. et al.*, 6 I. C. R. 488.

³⁷ *Duncan v. A. T. & S. F. Rd. Co. et al.* (1893), 6 I. C. C. R. 85; 4 I. C. R. 385.

³⁸ *Hafley v. St. L. & S. F. Rd. Co.* (1909), 15 I. C. C. R. 245.

³⁹ *New Orleans Live Stock Exchange v. T. & P. Rd. Co.* (1904), 10 I. C. C. R. 327.

rates with a view to the hazards incident to the transportation of certain classes of traffic it is not proper that they should advance those rates on account of damages which have accrued from their own neglect and which would not have accrued had the traffic been handled in a reasonably diligent and prudent manner.⁴⁰

The Supreme Court has held that the risk of injury, and the large amount which the railway companies are called upon to pay out in damages for losses, may excuse a higher freight rate on live stock than on dressed meats and packing house products.⁴¹

¶ F. VOLUME OF TRAFFIC AS AN ELEMENT.

It is well understood that freight rates should decline as a country develops and as business therefore increases. Rates are and have been lower in the very densely populated portions of our country than in those parts where population is less dense; and this is because with the increase of traffic comes increased profit from the handling of that traffic.⁴²

An immense volume of traffic is an argument for not only reasonable but comparatively low rates.⁴³ Therefore, the greater the tonnage of an article transported the lower should be the rate.⁴⁴

¶ G. WEIGHT AND BULK OF ARTICLE AS ELEMENTS.

The weight and bulk of the goods transported and the

⁴⁰ *Cattle Raisers' Association v. M. K. & T. Ry. Co. et al.* (1905), 11 I. C. C. R. 296; *New Orleans Live Stock Exchange v. T. & P. Rd Co.*, (1904), 10 I. C. C. R. 327.

⁴¹ *I. C. C. v. Chicago, Great Western Ry. Co.* (1907), 209 U. S. 108; 52 L. ed. 705, 28 Sup. Ct. 493, affirming 141 Fed. Rep. 1003.

⁴² *Re Class and Commodity Rates from St. Louis to Texas Common Points* (1905), 11 I. C. C. R. 238.

⁴³ *Farrar v. Southern Ry. Co. et al.* (1906), 11 I. C. C. R. 632.

⁴⁴ *Tift v. Southern Ry. Co. et al.* (1905), 10 I. C. C. R. 548; order of Commission enforced, 138 Fed. Rep. 753; decree enforced, *Southern Ry. v. Tift*, 206 U. S. 428; 51 L. ed. 1124, 27 Sup. Ct. Rep. 709; see also *Central Yellow Pine Association v. Ill. Cent. Rd. Co. et al.* (1905), 10 I. C. C. R. 505.

convenience of transportation are proper elements to be considered in fixing a rate.⁴⁵

¶ H. DISTANCE AS AN ELEMENT.

Distance is an important and ever present element in the problem of rates and in the *absence* of other influences it is a controlling factor.⁴⁶ However, mileage and the consequent cost of service regardless of other conditions cannot be made the controlling factor in determining the lawfulness of rates. An inflexible rule to the contrary would be disastrous to the transportation business of the country, and would be more injurious to the public than to the railroads.⁴⁷

To permit distance to be a sole or controlling factor would be to introduce discrimination which would create chaotic commercial conditions under which irreparable injury would be done to individuals, firms and communities without any compensating good resulting to the people or the commerce of the country as a whole.⁴⁸

It is because of the widely varying conditions of the country that the statute allows the railroads to adjust their charges to forces that are compulsory in character.⁴⁹

It was not the intention of the Act to Regulate Commerce to establish equal mileage rates; they are not compulsory,

⁴⁵ *I. C. C. v. C. G. W. Ry. Co.* (1905), 141 Fed. Rep. 1003, affirmed 209 U. S. 108, 28 Sup. Ct. 493; *Grain Shippers' Association of Northwestern Iowa v. Ill. Cent. Rd. Co. et al.*, 8 I. C. C. R. 158.

⁴⁶ *Freight Bureau of Cincinnati v. C. N. O. & T. P. Ry. Co. et al.* (1897), 7 I. C. C. R. 180, citing *Eau Claire Board of Trade v. C. M. & St. P. Ry. Co.* (1892), 4 I. C. R. 65, 5 I. C. C. R. 265; *Hill v. N. C. & St. L. R. Co.* (1895), 6 I. C. C. R. 343; see also *Freight Bureau of Cincinnati v. C. N. O. & T. P. Ry. Co. et al.* (1894), 6 I. C. C. R. 195, 4 I. C. R. 192; *New York Produce Exchange v. B. & O. Rd. Co. et al.* (1898), 7 I. C. C. R. 612; *McMorran et al. v. G. T. Rd. Co. et al.* (1889), 2 I. C. R. 604.

⁴⁷ *Lehmann, Higginson & Co. v. Southern Pacific Co.* (1890), 3 I. C. R. 80; 4 I. C. C. R. 1.

⁴⁸ *Wilhoit v. M. K. & T. Ry. Co.* (1907), 12 I. C. C. R. 139.

⁴⁹ *Lehmann, Higginson & Co. v. Southern Pacific Co.* (1890), 3 I. C. R. 80, 4 I. C. C. R. 1.

nor always politic; one effect of such rates would be to put an end to competition as a factor in making rates, and it would work a revolution in the business of the country, which though it might be beneficial in some instances would be destructive in others.⁵⁰ The Commission has said: "While we are not to be understood as intimating that substantial differences in distance are not to be given consideration, we are not willing to accept the theory of rate construction based purely on distances. Such adjustment would be revolutionary and destructive to established commercial interests of enormous volume and value."⁵¹

While it must be conceded that there is an apparent justice in the claim that rates should be apportioned to distance, it is not an absolute and unconditional right from which a departure may not be justified by other considerations. The public benefits, the greater volume of business of carriers warranting lower rates to all, and the forces of competition by other lines, may furnish reasons that outweigh a claim of right founded only on geographical location.⁵²

A rule of equal mileage rates over different roads would often prevent legitimate competition and frequently give a monopoly in transportation to the best and shortest road.⁵³

Where all the distances brought into comparison are considerable, and the difference between them is relatively small, there should be substantial similarity in the respective rates unless other modifying circumstances justify disparity.⁵⁴

⁵⁰ First Annual Report of I. C. C. 1887; see *La Crosse M. & J's Union v. C. M. & St. P. Ry. Co. et al.* (1888), 1 I. C. C. R. 629; 2 I. C. R. 9.

⁵¹ *Kansas City Transportation Bureau, etc., v. A. T. & S. F. Ry. Co. et al.*, 16 I. C. C. R. 195.

⁵² *Imperial Coal Co. v. P. & L. E. Rd. Co. et al.* (1889), 2 I. C. C. R. 618; 2 I. C. R. 436.

⁵³ *New Orleans Cotton Exchange v. C. N. O. & T. P. Ry. Co.* (1888), 2 I. C. C. R. 375; 2 I. C. R. 289; *New Orleans Cotton Exchange v. Ill. Cent. Rd. Co. et al.* (1890), 3 I. C. C. R. 534; 2 I. C. R. 777.

⁵⁴ *Eau Claire Board of Trade v. C. M. & St. P. Ry. Co. et al.*, 4 I. C. R. 65; 5 I. C. C. R. 265.

¶ I. COMPETITION AS A FACTOR.

See *Chapter 8, post.*

¶ J. VALUE OF RAILROAD INVESTMENT AND COST OF CONSTRUCTION, MAINTENANCE AND OPERATION OF ROAD AS ELEMENTS TO BE CONSIDERED IN DETERMINING THE REASONABLENESS OF RATES.

A carrier is entitled to earn a fair return upon the value of that which it employs for the public convenience and the service rendered;⁵⁵ but, in earning such return, they must operate their properties in accordance with the provisions of the statute forbidding unjust discriminations.⁵⁶ It is not the policy of the Government, in the regulation of railways under the Interstate Commerce Law, to require them to carry on the transportation business at a loss, but that they shall be fairly dealt with, and, having due regard to public as well as private interests, they shall rather derive a reasonable profit from their operations.⁵⁷

That railroad investments may be as secure as other property, the rates should be liberal until the earnings are sufficiently large for a fair return on the actual expenditure.⁵⁸ Broadly speaking, railways are entitled to impose rates which will maintain their properties in condition to properly discharge the functions which they undertake and yield a fair return to their owners.⁵⁹

The Commission has said:⁶⁰ "In consideration of the fact that the public has permitted, and in some sense induced these companies to undertake this *quasi*-public duty, instead of discharging it itself, we are inclined to think that, where

⁵⁵ *Smyth v. Ames* (Nebraska Freight Rate Case), 169 U. S. 466; 42 L. ed. 819; 18 Sup. Ct. Rep. 418; cited in *Central Yellow Pine Association v. Ill. Cent. Rd. Co. et al.* (1905), 10 I. C. C. R. 505; *Brabham et al. v. A. C. L. Rd. Co.* (1905), 11 I. C. C. R. 464; *M. K. & T. Ry. Co. et al. v. Love* (1910), 177 Fed. Rep. 493.

⁵⁶ *Brewer & Hanleiter v. L. & N. R. Co.* (1897), 7 I. C. C. R. 224.

⁵⁷ *Johnson v. C. St. P. M. & O. Ry. Co.* (1902), 9 I. C. C. R. 221.

⁵⁸ *Newland et al. v. Northern Pacific Rd. Co. et al.* (1894), 6 I. C. C. R. 131; 4 I. C. R. 474.

⁵⁹ *Mayor, etc., v. A. T. & S. F. Ry. Co. et al.* (1903), 9 I. C. C. R. 534.

⁶⁰ *Ibid.*

serious doubt exists, the railway should be given the benefit of that doubt."

Rates cannot be said to be reasonable which are not reasonably remunerative to the carrier, and rates which do not pay their full proportion of operating expenses, fixed charges and reasonable dividends, are not *per se* or "in and of themselves" reasonably remunerative.⁶¹

While it may be that carriers, under certain exceptional conditions, are justified in accepting rates which pay anything in excess of operating expenses or the cost of movement, yet as a general rule all traffic should be made, if possible, to pay its due proportion of operating expenses, fixed charges and reasonable dividends.⁶²

The United States Circuit Court has held that railroad property, properly built and properly managed, is entitled to earn an annual income of six (6) percent on its fair valuation, and that a statute fixing rates under which it cannot make such income is confiscatory and unconstitutional.⁶³

Neither Congress nor any legislative or administrative board acting by its authorization can competently establish rates for the transportation of property in interstate commerce that will not admit of the carrier earning such compensation for the service rendered as, under all the circumstances, is just and reasonable, since such action would deprive it of its property without due process of law, and would be a taking of its property for public use without just compensation, in violation of the fifth amendment to the Federal Constitution.⁶⁴

However, the public have a right to be exempt from unreasonable exactions, and the interest of the corporation is not the sole test of suitable rates.⁶⁵

⁶¹ Board of Trade v. N. C. & St. L. Ry. Co. et al. (1900), 8 I. C. C. R. 503.

⁶² Board of Trade v. N. C. & St. L. R. Co., 8 I. C. C. R. 503.

⁶³ St. Louis & S. F. Rd. Co. v. Hadley (1909), 168 Fed. Rep. 317.

⁶⁴ M. K. & T. Rd. Co. v. I. C. C. (1908), 164 Fed. Rep. 645.

⁶⁵ I. C. C. v. C. G. W. Ry. Co. (1905), 141 Fed. Rep. 1003, affirmed 209 U. S. 108, 28 Sup. Ct. 493; Grain Shippers' Association of Northwest Iowa v. Ill. Cent. Rd. Co. et al., 8 I. C. C. R. 158.

In "*In re Proposed Advances in Freight Rates*,"⁶⁶ the Commission said: "The question of the reasonableness of a rate, as controlled by the earnings of a railway, was considered by the Supreme Court of the United States in the *Nebraska Rate Case*.⁶⁷ The railways there contended that they should be allowed to earn interest on their funded debts and a dividend upon their capital stock. This claim the court denied, saying that it could not be affirmed, as a matter of law, that a railroad was entitled to earn upon the basis of its capitalization. That case also established certain general principles upon which the reasonableness of rates from the revenue standpoint are to be decided. It is said, as a conclusion of the whole discussion, that the carrier is entitled to earn a 'fair return upon the value of that which it employs for the public convenience.' But what is the value of a railway? Does not that value depend almost wholly upon the rate which it is permitted to charge? If the rates upon a railway system are reduced without thereby stimulating the movement of traffic, the value of the property is diminished. If its rates are advanced without loss of traffic, the value of its property is increased. Stated in another way, the value of a railway depends upon what it can earn on the basis of a reasonable rate, and the reasonableness of a rate depends upon the return which it will yield upon the value of the property.

"The Court pointed out in the above case certain elements which should be taken into account in determining the reasonableness of rates, and these were 'the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to

⁶⁶ *Re Rates and Practices of Mobile & Ohio Rd. Co.* (1903), 9 I. C. C. R. 373, affirmed in *Central Yellow Pine Assn. v. Ill. Cent. Rd. Co. et al.* (1905), 10 I. C. C. R. 505.

⁶⁷ *Nebraska Rate Case, Smyth v. Ames*, 169 U. S. 466; 42 L. ed. 819; 18 Sup. Ct. Rep. 418.

meet operating expenses.' The Court added that there might be other matters proper to be regarded in estimating the value of the property, and did not indicate the relative importance which was to be assigned to the various matters specified. *It is plain that until there be fixed, either by legislative enactment or judicial interpretation, some definite basis for the valuation of railroad property and some limit up to which that property shall be allowed to earn upon that valuation, there can be no exact determination of these questions. In the absence of such a standard the tribunal, whether court or Commission, which is called upon to consider this matter can only do so upon the exercise of its best judgment."*

Expenditures for additions to construction and equipment, as expenditures for original construction and equipment, should be reimbursed by all of the traffic they accommodate during the period of their duration. Improvements, therefore, that will last many years should not be charged wholly against the revenue of a single year.⁶⁸

In "*Central Yellow Pine Association v. Illinois Central R. Co.*,"⁶⁹ the Commission said: "While payments for repairs, whether applied to permanent improvements or equipment, are properly chargeable to current annual operating expenses, this would not appear to be the case as to the improvements or equipments themselves—the former being permanent and the latter lasting for many years. The expenditures for permanent improvements and for equipment made in a single year may obviate the necessity for like expenditures or expenditures to the same extent for many years to come. * * * They should not, therefore, be taxed as part of the current or operating expenses of a single year, but should be, so far as practicable, and so far as rates exacted from the public are concerned, 'projected proportionately over the future.'"

⁶⁸ Ill. Cent. Rd. Co. v. I. C. C. (1907), 206 U. S. 441; 51 L. ed. 1128, 27 Sup. Ct. Rep. 700.

⁶⁹ Central Yellow Pine Assn. v. Ill. Cent. Rd. Co. et al. (1905), 10 I. C. C. R. 505; Tift v. Southern Ry. Co. et al. (1905), 10 I. C. C. R. 548.

An increase in the cost of labor and in the price of railway material and supplies does not necessarily imply a decrease in the net earnings of a carrier, or preclude the possibility even of an increase in its net earnings, due to an increase in the volume of its traffic or to a decrease in the ratio of its operating expenses to its operating revenues; nor is an increase in the cost of labor and material, accompanied by a decrease in the net revenues of a carrier, necessarily inconsistent with the possibility that its net earnings may still suffice to afford it a fair return on the investment without an increase in its rate schedules.⁷⁰

In determining what will be reasonable rates for the future the Commission may properly consider that, under the rates in effect, a large surplus has been accumulated in the past, but it should not make rates for the purpose of distributing that surplus to the public.⁷¹

¶ K. CARRIERS MAY NOT GRADUATE THEIR RATES IN PROPORTION
TO THE PROSPERITY OF THE SHIPPER.

The right of a railroad company to fix its rates does not depend upon the question whether its patrons are making or losing money in their business.⁷²

Railroad companies have no right to graduate their charges in proportion to the prosperity which comes to industries whose products they transport.⁷³

The test of the reasonableness of a rate is not the amount of profit in the business of a shipper or a manufacturer, but whether the rate yields a reasonable compensation for the service rendered. If the prosperity of the manufacturer is to have a controlling influence, this would justify a higher

⁷⁰ Shippers' & Receivers' Bureau of Newark v. N. Y. O. & W. Ry. Co., 15 I. C. C. R. 264.

⁷¹ City of Spokane et al. v. Nor. Pac. Ry. Co. et al. (1909), 15 I. C. C. R. 376.

⁷² Union Pacific Ry. Co. v. Goodridge (1893), 149 U. S. 680; 13 Sup. Ct. Rep. 970; 37 L. ed. 986.

⁷³ Tift v. Southern Ry. Co. et al. (1905), 138 Fed. Rep. 753, enforcing order of Commission, 10 I. C. C. R. 548; decree affirmed, Southern Ry. Co. v. Tift, 206 U. S. 428; 51 L. ed. 1124, 27 Sup. Ct. Rep. 709.

rate on the traffic of the prosperous manufacturer than on that of one less prosperous. The right to participate in the prosperity of a shipper by *raising rates* is simply a license to the carrier to appropriate that prosperity, or, in other words, to transfer the shipper's legitimate profit in his business from the shipper to the carrier. The increased prosperity of shippers along the line of a railway enlarges the business of those shippers, and, as a consequence, both the tonnage of traffic which they receive in their business and which they ship to their customers. In this way the carrier necessarily and justly participates in, or is benefited by the prosperity of the shipper.⁷⁴

¶ L. RIGHT OF RAILROADS TO SHARE IN THE GENERAL PROSPERITY OF THE COUNTRY.

The freight rate is not a commodity the price of which should ordinarily vary with the price of the articles transported. A railroad may not advance its passenger fares simply because the people who ride are making more money. The question is, rather, whether the fare charged allows the carrier a fair return for its service.

To the statement of this proposition exists a most important qualification. Some freight rates are largely a commercial proposition, and insofar they may properly vary with varying business conditions. For example, the price of the product of a particular factory may depend largely upon the price of the raw material, and in the cost of that material the item of transportation by rail may enter as an important part. When the price of the product falls, the price paid for the raw material must also decline, and this necessitates a drop in the freight rate. It may happen that the freight rate is a sufficiently important part in the cost to the consumer, so that a reduction will stimulate consumption. A railroad often makes, and very properly makes, a low rate

⁷⁴ Central Yellow Pine Association v. Ill. Cent. R. Co. et al. (1905), 10 I. C. C. R. 505; Tift et al. v. Southern R. Co. et al. (1905), 10 I. C. C. R. 548.

in times of depression, for the purpose of enabling a manufacturer to continue his business.⁷⁵

To keep the factory in operation the railway may find it necessary to transport its raw material, its coal, its oil, and even its finished product, at a reduced rate. Whenever such depression has caused a reduction in rates, an advance may well follow the return of prosperity, but no such rule should be applied to cases where the reduction was not due to that cause.⁷⁶

¶ M. CARRIERS NO RIGHT TO ADJUST RATES TO PRESERVE
COMMERCIAL PROFIT TO MANUFACTURER.

The theory that an adjustment of rates to preserve a commercial profit to manufacturers and jobbers in all cases, if accepted as a necessary rule under the law, and generally applied, would be far reaching in its consequence, and clothe common carriers with a new function, to equalize at their own expense the net results of business operations, without regard to location or the conditions of handling and carriage. In many instances the work of the carrier would have to be done at less than cost, and in some for nothing. Such a rule is not admissible, therefore, as one of general application.⁷⁷

If the farmer cannot, in a given locality, raise and ship produce to market at a profit upon the existing freight rate, that is no reason why the carrier should be compelled to accept less than a reasonable sum for its service.⁷⁸

Conceding always that a carrier renders its services for hire, and is entitled to fair remuneration, which must necessarily include the cost of the service, a contribution to fixed charges, and something besides in the form of profit, the

⁷⁵ Re Rates from St. Louis to Texas Common Points (1905), 11 I. C. C. R. 238.

⁷⁶ Re Proposed Advances in Freight Rates (1903), 9 I. C. C. R. 382.

⁷⁷ *Thurber v. N. Y. C. & H. R. Rd. Co. et al.* (1890), 3 I. C. C. R. 473; 2 I. C. R. 742.

⁷⁸ *Grain Shippers' Association v. Ill. Cent. Rd. Co. et al.* (1899), 8 I. C. C. R. 158; *Buchanan v. Northern Pac. Rd. Co.* (1891), 5 I. C. C. R. 7, 3 I. C. R. 655.

question arises, how large a carrier's margin of profit should be to render its charges reasonable to the patrons whom it serves. It is manifestly quite important on public grounds that the citizens who furnish a carrier with business from the pursuits in which they are engaged should not be oppressed with rates that are disastrous to their pursuits, as that a carrier should not be required to perform its service at a loss. The public good requires that benefits, as well as burdens, shall be justly distributed, and that one interest shall not profit unduly at the expense and to the serious prejudice of another. This is the spirit of the law. A carrier has the peculiar advantage of being able to apportion its aggregate expenses upon its whole business, but a grower of fruit, or of grain, or a manufacturer, cannot do so. The product he markets must alone bear the transportation expense, and if this is excessive, and deprives him of any return upon his investment, or from his labor or skill, his business is ruined and a public injury is sustained.

The equitable rule doubtless is that rates should bear a fair and reasonable relation to the antecedent average cost of the traffic as delivered to the carrier for transportation, and the average market price the freight will command, or, as it is termed, the commercial value of the property. Carriers for the most part are believed to recognize this rule. A carrier cannot expect to absorb so much of the market price in its charges that the producer will be obliged to abandon his business. It is not meant by this that a carrier should transport freight at a loss to itself.

If a market cannot be reached except at a loss with freight upon which only a just transportation rate is charged, it is no longer a legitimate article of commerce, and a carrier is under no duty to transport it at its own expense. But the principle intended to be expressed is that, if a rate is so high as to yield a large profit to a carrier and to deprive its patrons of any profit, and make their business ruinous, then the interests of its patrons and the general public interest as well requires the carrier to remit a portion of its profits,

and accept a rate more equitable both to carrier and patron. This is indispensable to make a rate reasonable and just.⁷⁹

¶ N. COST OF PRODUCTION TO MANUFACTURER NOT PROPER CONSIDERATION.

Excess of manufacturing cost to a producer at one point over that of its competitors in other localities, by reason of inferior raw material and fuel, condition of its plant, cost of labor, or other like causes, is not to be considered in ascertaining the rightful relative adjustment of rates from such places.⁸⁰

¶ O. ADJUSTMENT OF RATES TO INDUCE MOVEMENT OF TRAFFIC.

If a carrier can profitably make a low rate for the purpose of obtaining traffic in existence, which would otherwise pass over a competing line, then it may profitably, under some circumstances, make a low rate for the purpose of *bringing into existence* traffic which would not otherwise pass over any line.⁸¹

It is undoubtedly to the interest of carriers to adjust their rates so as to induce the movement of traffic, and it follows, therefore, that they should keep in close touch with commercial conditions pertaining to sale of commodities and the needs of communities, and adjust their charges when practicable within reasonable limitations, to meet those conditions and encourage sales and the movement of freight. While there is a mutual interest in sales and transportation, and it is proper that both seller and transporter should regard the same, the Commission, when called upon to determine what are just rates, must have due regard to the rights of the carriers as well as the interests of the shippers.

⁷⁹ Delaware State Grange v. N. Y. P. & N. Rd. Co. et al. (1891), 4 I. C. C. R. 588; 3 I. C. R. 554.

⁸⁰ Colorado Fuel & Iron Co. v. Southern Pacific Co. et al. (1895), 6 I. C. C. R. 488.

⁸¹ Grain Shippers' Association v. Ill. Cent. Rd. Co. et al. (1890), 8 I. C. C. R. 158; Buchanan v. Northern Pac. Rd. Co. (1891), 5 I. C. C. R. 7, 3 I. C. R. 655.

Notwithstanding the fact that the movement of traffic is encouraged and increased when carriers adjust their charges to meet mercantile interests, yet it cannot be held to be a duty of the carriers, in adjusting their charges, to equalize the value of commodities in their final distribution.

The decisions of the Commission must be based upon broad principles of justice, keeping in view the welfare of the public as well as the interests of carriers and shippers in the entire territory involved, and under the facts and circumstances of the case it should not be limited to those interests located in a restricted part of the producing territory.⁸²

¶ P. LOW RATES TO TAKE CARE OF EMPTY CAR MOVEMENTS.

That a large movement of return empty cars may rightfully, under certain circumstances, justify a lower rate, is undoubtedly true. When articles of traffic do not move on account of a rate which constitutes too great a burden, and the carrier is moving empty cars in the direction in which such articles would naturally move, at a lower rate, the carrier may be justified in carrying at a rate sufficient to bring about their movement, even at a rate barely remunerative. But no extra or additional charge in consequence can justifiably be put on other articles carried.^{82a}

In the *Import Rate Case*⁸³ the Supreme Court of the United States held that, where the acceptance of import traffic enables carriers to take advantage of the preponderance of empty car movement from ports of entry, any rates which the carrier may charge may be regarded as remunerative.

¶ Q. PROPORTION AS AN ELEMENT IN FIXING RATES.

In the *Matter of Chicago, St. P. & K. C. R. Co.*⁸⁴ Chairman

⁸² *Chicago Lumber & Coal Co. et al. v. Tioga S. E. Ry. Co. et al.* (1909), 16 I. C. C. R. 323; *Chickasaw Compress Co. v. G. C. & S. Ry. Co. et al.* (1908), 13 I. C. C. R. 187.

^{82a} *Schumacher Milling Co. v. C. R. I. & P. Ry. Co.* (1893), 6 I. C. C. R. 61; 4 I. C. R. 373.

⁸³ *Texas & Pacific Ry. Co. v. I. C. C.* (1896), 162 U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 940.

⁸⁴ In the *Matter of Chicago, St. P. & K. C. R. Co.*, 2 I. C. C. R. 231;

Cooley, in delivering the opinion of the Commission, said: "The Commission is of the opinion that the phrase, 'Rates reasonable in and of themselves,' which is often made use of in similar cases to the present, is very likely to be misleading. It is a phrase which seems to imply that the particular rates may be considered by themselves as if they were and could be affected by no others. * * * But it is not the theory of the Act to Regulate Commerce that the reasonableness of rates can thus be separately and independently determined. On the contrary, it is assumed in the Act that persons, corporations and localities are interested not only in the rates charged to them, but in the rates which are charged to others also and, while the Act does not require all rates to be proportional, it nevertheless makes the element of proportion an important one when the rates for any locality are to be determined. No rates can therefore be reasonable in and of themselves within the contemplation of the Act which are made regardless of proportion."

¶ R. RELATION BETWEEN THE ARTICLES TRANSPORTED.

A very important factor in rate-making is the relation existing between the articles transported. If the relation is remote, such as that between flour and silk, a change of a few cents per hundred pounds in the rates charged for transporting one of them may not affect traffic in the other; but if the relation is close, such as that between raw material on the one hand, and goods manufactured from that material on the other, a slight change in the adjustment of transportation charges between the two articles may be sufficient to close manufacturing plants at some points and increase the output of plants located elsewhere. And it is because of this difference that some discriminations made by carriers are justifiable under certain circumstances.⁸⁵

2 I. C. R. 137, cited and affirmed in *Martin v. L. & N. R. Co.* (1903), 9 I. C. C. R. 581.

⁸⁵ *Chicago Live Stock Exchange v. C. G. W. Ry. Co.* (1905), 10 I. C. R. 428; see *Re Rates on Corn and Corn Products* (1905), 11 I. C. C. R. 227.

Disadvantage to the shipper of one product cannot be predicated upon the charges for transporting another product differing essentially in character from the former and widely dissimilar in the demands which it supplies.⁸⁶ There is no relation between wheat and hay and straw, for instance, which would require equal rates.⁸⁷

However, where articles are competitive in the same market, a fair and just relation should obtain in fixing the rates for the transportation of such articles. The rates on wheat, for instance, should not exceed the rate on flour, the manufactured product.⁸⁸ There is no inflexible requirement that rates upon grain and the products of grain should be, under all circumstances, the same, but rather that carriers may, in just regard for their own interest or to meet special conditions, vary those rates within narrow limits.

When once the relation has been established, however, business developed, and money expended upon the strength of it, then the carrier cannot, in the absence of some sufficient reason, change that relation, nor would the Commission direct a change.⁸⁹

The Commission has held that there is no transportation reason why different rates should be applied on fire brick, building brick and paving brick.⁹⁰ Classification must be based upon a real distinction from a transportation standpoint. Aside from the difficulty in learning what use the brick were to be put to upon reaching their destination, the Commission held it cannot regard a classification as scientific, or a difference in rates as well based, which is altogether founded upon a distinction that has no transportation significance.⁹¹ Such a differentiation, if permitted and ex-

⁸⁶ *Rice v. C. W. & R. Rd. Co. et al.* (1892), 5 I. C. C. R. 193; 3 I. C. B. 841.

⁸⁷ *I. C. C. v. L. S. & M. S. Ry. Co.* (1905), 134 Fed. Rep. 942.

⁸⁸ *Chamber of Commerce v. C. M. & St. P. Ry. Co. et al.* (1898), 7 I. C. C. R. 481.

⁸⁹ *Howard Mills Co. v. Pac. Ry. Co. et al.*, 12 I. C. C. R. 259.

⁹⁰ *Stowe-Fuller Co. v. Pa. Co.* (1907), 12 I. C. C. R. 216.

⁹¹ *Ibid.*

tended throughout the various classes of freight, would lead to an almost endless multiplication of rates, which could find no excuse save the use which might be made of the article transported.⁹²

The Commission has held that the rate on shingles should not exceed rates on lumber, and that the rates on lumber and box shooks should be the same.^{92a} That body has also found the rate on egg-case material, when not manufactured further than when cut to length, unreasonable to the extent that it exceeded the rate on box lumber.^{92b}

§ 90. Use of Classification in Rate-Making and Elements to be considered in fixing Same.

See *Chapter 6, ante*.

§ 91. Methods of advancing Rates.

There are two ways in which an advance in rates may be accomplished: First, by increasing the rate *eo nomine*; second, by changing the classification.⁹³

§ 92. Rates must be Just and Reasonable.

¶ A. MANDATE OF THE STATUTE.

The first section of the Act to Regulate Commerce after defining the term "transportation" to include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported, declares that all charges made for any service rendered or to be rendered in the transportation of property or in connection therewith, shall

⁹² *Stowe-Fuller Co. v. Pa. Co.* (1907), 12 I. C. C. R. 216.

^{92a} *Michigan Box Co. v. F. & P. M. R. R. Co.* (1895), 6 I. C. C. R. 335, cited in *Sawyer & Austin Lumber Co. v. St. L. I. M. & S. Ry. Co. et al.* (1910), 19 I. C. C. R. 141.

^{92b} *Anderson-Tully Co. v. C. R. I. & P. Ry. Co. et al.* (1910), 18 I. C. C. R. 48.

⁹³ *Fourteenth Annual Report of I. C. C.* (1900); *National Hay Association v. L. S. & M. S. Rd. Co. et al.* (1902), 9 I. C. C. R. 264.

be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

This provision, in so far as it inhibits carriers from the imposition of unjust and unreasonable rates, is an express adoption by Congress of the principles of the common law.⁹⁴ Where a carrier promulgates a schedule of rates, it acts under the mandate of the Act and the common law that all rates must be fair and reasonable, and subject to the rule that it will be liable in an action for damages suffered by the shipper due to any unreasonable exaction.⁹⁵

The question of the reasonableness of a rate is one of fact.⁹⁶ That is, the facts as they exist when it is sought to put such rate schedule into operation.⁹⁷

¶ B. MEANING OF THE TERMS "JUST" AND "REASONABLE."

The words "reasonable" and "just," as used in the Statute as applied to rates, are each relative terms. They do not mean to imply that the rates upon every railroad engaged in interstate commerce shall be the same or even about the same. The conditions and circumstances of each road surrounding the traffic and which enter into and control the nature and character of the service performed by the carrier in the transportation of property, such as the cost of transportation, which involves volume or lightness of traffic, expenses of construction and of operation, competition in some respects of carriers, rates made by shorter and competing lines to the same points of destination, space occupied by freight, value of freight and risk of carriage to carrier, all have to be considered in determining whether a given rate is "reasonable" and "just."

⁹⁴ *Tift v. Southern Ry. Co. et al.* (1903), 123 Fed. Rep. 789, affirmed 138 Fed. Rep. 753, 206 U. S. 428, 51 L. ed. 1124, 27 Sup. Ct. 709.

⁹⁵ *Southern Pacific Co. v. Colorado F. & I. Co. et al.* (1900), 101 Fed. Rep. 779, 42 C. C. A. 12.

⁹⁶ *Illinois Central R. Co. v. I. C. C.* (1907), 206 U. S. 441; 51 L. ed. 1128, 27 Sup. Ct. Rep. 700.

⁹⁷ *Smyth v. Ames* (1897), 171 U. S. 361; 43 L. ed. 197, 18 Sup. Ct. 888.

Tested by these rules, a rate may be a very reasonable and just rate on one railroad and not reasonable and just on another. For example, a rate that would be reasonable and just on the New York Central & Hudson River Railroad may be so low that it would force the Minneapolis & St. Louis Railway into bankruptcy in less than thirty days; and a rate that might be reasonable and just on the Minneapolis & St. Louis Railway might be so high that if attempted to be enforced on the New York Central & Hudson River Railroad for thirty days, it would practically destroy the business of the latter. This diversity is most observable in the different portions of the country, as, for instance, between lines of railroad in the Southern States or the States of the far West, on the one hand, and the railroad lines of the Middle and Eastern States on the other. Where, however, railroad lines reach the same common points, are located in the same territory, and compete with each other, as well as with other lines, for the business of that territory, their rates are, in general, much the same, and this is one of the necessities of the situation. Even among the rail carriers where there is no opposing water competition there may be occasional differences in rates that will be found substantially justified by the different circumstances and conditions under which the lines are operated.⁹⁸

A reasonable rate, therefore, is one that will make just and fair return to the carrier when it is charged to all who are to pay it without unjust discrimination against any, and when the revenue it produces is subject to no improper reduction.⁹⁹

§ 93. Reasonableness of Rates.

¶ A. IN GENERAL.

The mandate of the Statute is that all rates must be just

⁹⁸ *New Orleans Cotton Exchange v. Illinois Central Rd. Co. et al.* (1890), 3 I. C. C. R. 534; 2 I. C. R. 777.

⁹⁹ Fourth Annual Report of I. C. C. (1890).

and reasonable, but how the reasonableness and justice of a rate are to be determined is not prescribed by the Statute, nor has any satisfactory test been evolved by transportation experts. Conflicts about rates arise from conflicting interests of carriers and shippers. As carriers make their own rates, they have primary regard for their own interests, and often give less weight than they ought to the interests of those they serve. This is more frequently the case in the absence of competition. Under the stress of competition, or sometimes for the purpose of developing business, rates that are equitable or even very low are likely to be made. But when a controversy arises between the public and a carrier, the question of the reasonable limit of a rate usually involves many considerations, and is often difficult to determine. A rate that might be regarded as reasonable and just by a producer and shipper, might, from a carrier's standpoint, be deemed extremely unreasonable and unjust, and so, conversely, a rate that a carrier might claim to be reasonable in itself, and that it might support with strong reasons based upon the cost of the service, the quantity of the business and the characteristics of its line of road, might exhaust the greater part of the proceeds of the producer's commodity, and be destructive to its interests. It is only stating a truism, therefore, to say there is no recognized test of a rate mutually reasonable for a carrier and for the producer of the traffic.

The reasonableness of a rate must consequently be ascertained in every instance in which the question arises, by its relations both to the carrier and to the shipper, and by comparison with rates normally charged for like or similar service.¹⁰⁰ Great weight should be given to the opinion of expert witnesses; the effect of the rates on the growth and prosperity of the place to and from which they are charged; the cost of transportation as compared with the rates; and the rates in force at numerous other places where the cir-

¹⁰⁰ Delaware State Grange, etc., v. N. Y. P. & N. R. Co. et al. (1891), 3 I. C. R. 554; 4 I. C. C. R. 588.

cumstances are as nearly similar as may be to those prevailing at the point in question.¹⁰¹ However, the following paragraphs of this section and the considerations under *Section 82, ante*, will show the various questions and factors to be considered and the questions not to be considered in determining the reasonableness of a rate.

¶ B. LOWER RATE FOR CARLOAD THAN FOR LESS-THAN-CARLOAD QUANTITIES.

The transportation of freight at a lower rate in carload quantities than in less-than-carload quantities is not in contravention of the Act to Regulate Commerce. The circumstances and conditions of the transportation in respect to the work done by the carrier and the revenue earned are dissimilar, and may justify a reasonable difference in rate. The public interests are subserved by carload classifications of property that, on account of the volume transported to reach markets or supply the demands of trade throughout the country, legitimately or usually moves in such quantities.¹⁰²

The differential between the carload and less than carload rate, however, must be reasonable, fair and just.¹⁰³

While, however, it is lawful for the carrier to establish carload and less than carload rates on a particular commodity, with a reasonable difference between the two rates and a reasonable carload minimum, the carrier cannot under the law be required to do so.¹⁰⁴

¹⁰¹ *I. C. C. v. Southern Ry. Co.* (1902), 117 Fed. Rep. 741; affirmed, 122 Fed. Rep. 800; 60 C. C. A. 540.

¹⁰² *Thurber v. N. Y. C. & H. R. Rd. Co.* (1890), 2 I. C. R. 742; 3 I. C. C. R. 473; *Blanton Duncan v. A. T. & S. F. R. Co. et al.* (1893), 6 I. C. R. 85.

¹⁰³ *Havard Co. v. Pennsylvania Co. et al.* (1890), 4 I. C. C. R. 212; 3 I. C. R. 257; *New York Produce Exchange v. B. & O. Rd. Co. et al.* (1898), 7 I. C. C. R. 612; *Brownell v. C. & C. M. Rd. Co.* (1893), 5 I. C. C. R. 638; 4 I. C. R. 285; *Scofield v. L. S. & M. S. Ry. Co.* (1888), 2 I. C. C. R. 90; 2 I. C. R. 67; *Business Men's League, etc., v. A. T. & S. F. Ry. Co. et al.* (1902), 9 I. C. C. R. 318.

¹⁰⁴ *Planters' Compress Co. v. C. C. C. & St. L. Ry. Co.* (1905), 11 I. C. C. R. 382.

The Commission has hesitated to require the establishment of carload rates where none exist. If the normal unit of shipment is the carload, as in coal, ore, etc., it is of course a public benefit to secure for all the lower carload rate; but if the accustomed traffic has a less unit than a carload and ordinary shipments are by the ton or bale, or hundredweight, the effect of a newer lower carload rate is to give an advantage to the large shipper—a discrimination the Commission has not encouraged even though its first result is to secure lower rates to the large shipper, less cost to the carrier, and, in its encouragement of trade, to increase the carrier's revenues.¹⁰⁵

¶ C. MINIMUM CHARGE FOR TRANSPORTATION OF LESS-THAN-CARLOAD SHIPMENTS.

It is reasonable and proper that carriers should fix a minimum weight and charge for the transportation of less-than-carload shipments. This is justified by the necessary expense and trouble attending the carriage of such shipments, large or small, which aside from the actual manual labor involved, are practically the same irrespective of the weight or bulk of the package.¹⁰⁶ For example, the Official Classification provides as follows: "No single package or small lot of freight of one class will be taken in less than 100 pounds at the first class rate and in no case will the charge for a single shipment be less than 25 cents."

¶ D. ANY-QUANTITY RATES.

The Commission decided that where carriers have in effect a uniform rate per 100 pounds for any quantity, which rate applies uniformly to all shippers, a different rate applied to carloads from that applied to less than carloads will not be ordered, especially when such differential will have a tendency to increase the rate on less than carloads

¹⁰⁵ *Kindel v. B. & O. Rd. Co. et al.* (1905), 11 I. C. C. R. 495.

¹⁰⁶ *Wrigley v. C. C. C. & St. L. Rd. Co. et al.* (1905), 10 I. C. C. R. 412.

and further to cut off consumers and small dealers from purchasing at distant markets in less than carload lots.¹⁰⁷

¶ E. TRAIN-LOAD RATES.

It is not always enough that open rates are made and strictly observed, even if fair and reasonable for the service rendered; nor is it sufficient in every case that a relation of rates, just from the carrier's standpoint, is maintained as between shipments of the same article by different methods or in different quantities. For example, a carload rate lower than the less than carload rates, where the difference is not too great, would ordinarily be lawful; but a still lower rate for shipments of a hundred or a thousand carloads, though duly published and impartially applied, would be wholly indefensible.¹⁰⁸

A lower rate for a train load than for a carload is, in effect, allowing a lower rate upon a condition which only few shippers can comply with, and is therefore regarded as unlawful.¹⁰⁹

¶ F. HIGHER RATES WHEN SHIPMENTS ARE TENDERED WITH OTHER THAN UNIFORM BILL OF LADING.

A carrier's tariff provided higher rates on shipments not tendered with a uniform bill of lading: *Held*, That the tender of a shipment accompanied by other than a uniform bill of lading may not be taken by the carrier as evidence of the shipper's election to use the higher rate. The carrier must direct his attention to the fact that a lower rate is available under a uniform bill of lading.¹¹⁰

¶ G. RELEASED RATES.

See "*Limitation of Carrier's Liability*," Chapter 20, *post*.

¹⁰⁷ *Duncan & Co. et al. v. N. C. & St. L. Ry. Co. et al.*, 16 I. C. C. R. 590.

¹⁰⁸ *Carr v. Northern Pacific Ry. Co.* (1901), 9 I. C. C. R. 1.

¹⁰⁹ *Planters' Compress Co. v. C. C. C. & St. L. Ry. Co. et al.* (1905), 11 I. C. C. R. 382; *Paine Bros. & Co. v. L. V. Rd. Co. et al.* (1897), 7 I. C. R. 218.

¹¹⁰ Rule 160, Con. Rul. Bul. No. 4 (April 6, 1909).

¶ H. LOWER RATES FOR A LONGER THAN FOR A SHORTER HAUL OVER THE SAME LINE IN THE SAME DIRECTION, THE SHORTER BEING INCLUDED WITHIN THE LONGER DISTANCE.

See "*Long-and-Short-Haul Clause and Relief from Operation Thereof*," Chapter 8, *post*.

¶ I. CARRIERS DEMANDING A HIGHER RATE WHEN FREIGHT IS SHIPPED COLLECT THAN WHEN PREPAID.

It is fundamental that there can be but one lawful rate between two points, and the law takes no cognizance whatever of the distinction formerly made by the express companies between prepaid and collect shipments. It is a carrier's right as a public service corporation to demand prepayment on all shipments, and it may not distinguish between persons who pay in advance and those who do not. The carrier may waive its right to demand prepayment, and accept a shipment with the understanding that it will collect the charges upon delivery to the consignee; but if it does not collect such charges from the consignee, it must look to the consignor for payment. The collection of the lawful rate is a duty imposed on the carrier by law, and it is given a lien upon the property transported to enforce the payment of the charges. To accept a shipment without prepayment is no more than to extend credit to the consignor, and this within reasonable and nondiscriminatory limits it may do. But neither a railroad, an express company nor other public carrier may lawfully make rates based upon the waiver of its right to collect charges at the time it receives a shipment. For, if there is any risk in the carrying of the shipment without payment of charges, the carrier must, in fulfillment of its own duty under the law, resolve that risk against the consignor and collect in advance. Rates may not be based on a temporary waiver of a carrier's right, nor may the reasonableness of a rate turn upon the assumption that some will pay the lawful charges and others will not, so long as the law gives the right to collect the rate in

advance and demands that the carrier shall, without fail, collect its published charges.¹¹¹

¶ J. THROUGH RATES WHICH EXCEED COMBINATION OF LOCAL RATES PRIMA FACIE UNREASONABLE.

The Commission has several times said that, ordinarily, a through rate ought not to exceed the sum of the locals.¹¹²

It has also announced that it will view a through rate that is in excess of the sum of the local rates between the same points as *prima facie* unreasonable, and that, if called upon to pass upon such a case under formal complaint, will place the burden of proof upon the carriers to defend the reasonableness of such rate.¹¹³

This, however, does not assume that there may not be instances in which a through rate, higher than the sum of the locals between the same points, will be found reasonable.¹¹⁴ Neither does it furnish to carriers or to shippers any license to depart from the rates and terms of tariffs lawfully applicable to shipments. A specific through rate is the lawful rate upon a through shipment, even though some combination might make lower. The higher rate may not be reduced except by lawful amendment to tariff, and carrier may not charge the higher through rate upon one shipment and the lower combination rate upon another shipment of the same kind between the same points at the same time.¹¹⁵

¹¹¹ Boise Commercial Club v. Adams Express Co. et al. (1909), 17 I. C. C. R. 115; Railroad Commission of Florida v. S. F. & W. Ry. Co. et al. (1891), 5 I. C. C. R. 13; 3 I. C. R. 688; Boston Fruit & Produce Exchange v. N. Y. N. E. Rd. Co. et al. (1891), 5 I. C. R. 1; 3 I. C. R. 604.

¹¹² Montgomery Freight Bureau v. W. Ry. of Alabama (1908), 14 I. C. C. R. 150; Railroad and Warehouse Commissioners v. Eureka Springs Ry. Co., 7 I. C. C. R. 69; Hilton Lumber Co. v. W. & W. Rd. Co., 9 I. C. C. R. 17; Coffeyville Vitrified Brick & Tile Co. v. St. L. & S. F. R. R. Co., 12 I. C. C. R. 498.

¹¹³ Morgan et al. v. M. K. & T. Ry. Co. et al. (1907), 12 I. C. C. R. 525; Rule 56, Tariff Circular 17-A; Hardenberg, Dolson & Gray v. Northern Pac. Ry. Co. (1908), 14 I. C. C. R. 579.

¹¹⁴ Morgan et al. v. M. K. & T. Ry. Co., *supra*.

¹¹⁵ *Ibid*.

It should be remembered that the Commission has not ruled that a joint through rate exceeding the sum of the locals is conclusively presumed to be unreasonable. It has simply placed upon the defendant carriers the burden of showing such a joint through rate to be reasonable. There are instances in which circumstances and conditions might justify the higher through rate, and it is for the carriers to demonstrate their potency in the establishment of a through rate that exceeds the sum of the locals. The practical effect of an order that the through rate shall not exceed the sum of the locals would place in the hands of the carriers the power to nullify such order. They have the right to advance the separate locals. And, should they do so, they would then, under such an order, have the right to increase the joint through rate, and the order would be of no effect.¹¹⁶

The ultimate charge is what the shipper is interested in, and it is the ultimate charge, where the service is substantially the same, to which the rule of the Commission is directed.

The minimum weights on all carload shipments are to be considered as part of the rates, and the mere fact that a minimum applicable to parts of a combination of rates may be higher or lower than the minimum applicable to the joint through rate does not overcome the presumption of unreasonableness in a joint rate and minimum in excess of the sum of the locals and resulting from the respective minima applicable thereto. Were the Commission to hold otherwise, carriers, by simply making differing minima on local and through shipments, could carry all through traffic via gateways they might select on higher charges than would result from combinations of locals through the same gateway.^{116a}

¹¹⁶ *Michigan Buggy Co. v. G. R. & I. Ry. Co.* (1909), 15 I. C. C. R. 299.

^{116a} *Lull Carriage Co. v. C. K. & S. Ry. Co. et al.* (1910), 19 I. C. C. R. 15.

¶ K. THROUGH RATE LOWER THAN COMBINATION OF LOCALS.

In general, joint through rates are lower than the sum of the locals between two points, and obviously there can very seldom be any transportation reason why such should not be the case.¹¹⁷ Through rates, higher than combination of local charges, are extremely rare in railroad transportation, and those which have been brought to the attention of the Commission have only been approved when occasioned by extraordinary and peculiar circumstances. They have not been justified in any case by the fact of water or other competition at points of junction between the connecting carriers. The reason is plain. Ordinarily, through shipments are carried by connecting roads at rates *less* in amount than those of the combined locals, and, primarily, this is so because the necessities of commerce require it, and because it is commonly *less expensive* to the carriers to transport through traffic than to perform the services involved in two local shipments to and from some intermediate station; and it is hardly conceivable that the carriers' cost of through carriage can in any case be greater than that of supplying the two distinct local services.¹¹⁸

A through rate is not necessarily reasonable, however, because it does not exceed the aggregate of two reasonable local rates.¹¹⁹

As stated above, that the through rate should not exceed the sum of the locals is a doctrine well established, but it

¹¹⁷ Laning-Harris Coal & Grain Co. v. Mo. Pac. Ry. Co., 13 I. C. C. R. 154, affirmed in Flaccus Glass Co. v. C. C. C. & St. L. Ry. Co. et al., 14 I. C. C. R. 333; St. L. Hay & Grain Co. v. M. & O. Rd. Co. et al. (1905), 11 I. C. C. R. 90; same v. Ill. Cent. Rd. Co. (1905), 11 I. C. C. R. 436; N. Y. N. H. & H. Rd. Co. v. Platt, 7 I. C. C. R. 323. Coffeyville Brick & T. Co. v. St. Louis & S. F. Rd. Co. et al. (1907), 12 I. C. C. R. 498; Savannah Bureau of Frt. & Trnsp. v. C. & S. Ry. Co. (1898), 7 I. C. C. R. 601.

¹¹⁸ Hilton Lumber Co. v. W. & W. Rd. Co., 9 I. C. C. R. 17.

¹¹⁹ Minneapolis & St. L. Rd. Co. v. State of Minnesota, ex rel Railroad & Warehouse Commission (1901), 186 U. S. 257; 46 L. ed. 1151, 22 Sup. Ct. 900.

does not follow as a corollary that the sum of the locals should always be reduced to equal the through rate.¹²⁰

The Commission has stated that it knows of no law, either common or statutory, under which the jobber is entitled to distribute commodities under as low or lower total freight rates as the through rates from point of origin to the point of destination.¹²¹

¶ L. HIGHER RATE OVER ROUTE COMPOSED OF TWO OR MORE CARRIERS THAN OVER A SINGLE LINE.

It has long been established, and recognized as just and reasonable, to allow two or more roads making up a through line to charge somewhat more for the through transportation, the earnings on which must be divided among all, than would be deemed reasonable and sufficient for the transportation if performed wholly by a single road.¹²²

¶ M. WHERE A CHANGE IN RATES WILL DISTURB RELATIVE RATES IN A LARGE EXTENT OF TERRITORY.

Where a change in rates is demanded which will apparently throw into confusion an adjustment of rates over a large section of country which are not claimed to be unreasonable of themselves, and in respect to which any modification upon one line will result in general disturbance and friction among a large number of shippers and carriers of the same product, there should be a clear right to the relief under some direct provision of the law in order to justify the Commission in requiring it.¹²³ Under such circumstances the Commission will decline to order such reduction until the

¹²⁰ Williams & Co. v. V. S. & P. Ry. et al., 16 I. C. C. R. 482; Crews v. R. & D. Rd. Co. (1888), 1 I. C. R. 703.

¹²¹ Ibid.

¹²² Loup Creek Colliery Co. v. Virginian Ry. Co. et al. (1907), 12 I. C. C. R. 471.

¹²³ Rend v. C. & M. V. Ry. Co. (1889), 2 I. C. C. R. 540; 2 I. C. R. 313; Rice, R. & W. v. W. N. Y. & P. Rd. Co. (1888), 2 I. C. C. R. 389; 2 I. C. R. 298; Freight Bureau of Cinti. v. C. N. O. & T. P. Ry. Co. et al. (1897), 7 I. C. C. R. 180.

matter has been fully presented and has received the fullest consideration.¹²⁴

¶ N. RATES ESTABLISHED BY CONCERT OF ACTION BETWEEN CARRIERS.

In determining an issue of unreasonableness of a rate, the Commission should inquire into the circumstances under which the rate was made.¹²⁵ Where rates at a particular point are unduly influenced by an agreement or combination among carriers to suppress competition at that point, such fact may properly be considered in determining the question of undue discrimination and the reasonableness *per se* of the rates at such possible competitive point.¹²⁶

While the question whether such concert of action is in violation of the "Sherman Antitrust Act" is for determination only by the Courts, it is the province and duty of the Commission, when the reasonableness of rates is in issue before it, to consider whether the advanced rates resulted from untrammelled competition, or were fixed by concert of action or combination of the carriers.¹²⁷ If it finds that it was not the product of free competition, but was the result of an agreement, this fact would rob the rate of the presumption of reasonableness which might otherwise attach, and should be considered by the Commission in determining whether the

¹²⁴ Dallas Freight Bureau v. M. K. & T. Ry. Co. et al. (1907), 12 I. C. C. R. 427.

¹²⁵ China & Japan Trading Co. v. Georgia R. R. Co. et al. (1907), 12 I. C. C. R. 236. This is a fair import of what the Commission has held in the following cases: In Matters of Advances in Rates from St. Louis to Texas Points, 11 I. C. C. R. 238; Cattle Raisers' Asso. of Texas v. M. K. & T. Ry. Co. et al., 11 I. C. C. R. 296; Tift v. Southern Ry. Co. et al., 10 I. C. C. R. 548; Central Yellow Pine Assn. v. Ill. Cent. Rd. Co. et al., 10 I. C. R. 505.

¹²⁶ I. C. C. v. L. & N. Rd. Co. (1903), 190 U. S. 273; 47 L. ed. 1047, 23 Sup. Ct. Rep. 687.

¹²⁷ Tift v. Southern Ry. Co. et al. (1905), 10 I. C. C. R. 548; see also Central Yellow Pine Association v. Ill. Cent. Rd. Co. et al., 10 I. C. C. R. 505.

advance was justifiable;¹²⁸ but if, after giving due weight to that and all other circumstances, the Commission is still of the opinion that the rate in effect is not too high, the mere fact that it was the product of an unlawful combination will not justify it in setting such rate aside.¹²⁹

The existence of an agreement between carriers to advance rates is not conclusive that the rates as advanced are unreasonable.¹³⁰

¶ O. HIGHER RATES ON PERISHABLE TRAFFIC.

Where the shipper renders special service in the transportation of perishable traffic, such as rapid transit and prompt delivery, a higher rate than the carriage of ordinary freight is warranted.¹³¹

Perishable freight requiring care, refrigeration and expedition in transit and carriage in heavy refrigerator cars, is necessarily transported at greater cost to the carrier than that involved in the transportation of ordinary freight.¹³²

The handling of perishable fruit, for instance, is probably the severest test of railroad transportation, so far as care, attention and expense are involved. The very essence of such transportation is expedition in addition to the speed required; there must be provided a special car, loaded with ice, which has to be renewed when the transportation is beyond certain fixed distances, or if, for any cause, there is delay. It is of vital importance to the growers of perishable products and the further development of the business that

¹²⁸ *China & Japan Trading Co. v. Georgia R. R. Co.*, etc., *supra*.

¹²⁹ *Ibid*.

¹³⁰ *Warren Mfg. Co. v. Southern Ry. Co. et al.* (1907), 12 I. C. C. R. 381; *Enterprise Mfg. Co. v. Georgia Rd. Co. et al.* (1907), 12 I. C. C. R. 451; *Chicago Lumber & Coal Co. et al. v. Tioga S. E. Ry. Co. et al.* (1909), 16 I. C. C. R. 323; *Board of Mayor and Aldermen of Bristol v. V. & S. W. Ry. Co. et al.* (1909), 15 I. C. C. R. 453.

¹³¹ *Loud v. South Carolina Ry. Co. et al.* (1892), 5 I. C. C. R. 529; 4 I. C. R. 205; *Delaware State Grange v. N. Y. P. & N. Rd. Co. et al.* (1891), 4 I. C. R. 588; *Boston F. & P. Exchange v. N. Y. & N. E. Rd. Co. et al.* (1891), 4 I. C. C. R. 664; 3 I. C. R. 493.

¹³² *Consolidated Forwarding Co. v. Southern Pacific Co. et al.* (1905), 10 I. C. C. R. 590.

nothing should be done which would have a tendency to decrease the efficiency of the service.¹³³

¶ P. LOW RATES FOR LOW-GRADE TRAFFIC.

It is to the interest of the carriers, as well as the public, that their rates be low enough, if not below a remunerative point, to permit the general movement and distribution of those commodities in general demand in large quantities for construction, building, manufacturing and other purposes. Reasonable freedom of such movement and distribution stimulates the growth and development of the country, and thereby promotes all interests. The general prevalence of such lower rates on that character of freight is due to the carriers' usual policy of making rates that will fairly permit the traffic to move, if of such value that it will bear reasonable charges.¹³⁴

In the carriage of great staples, which supply an enormous business, and which in market value and actual cost of transportation are among the cheapest articles of commerce, rates yielding only moderate profit to the carrier are both necessary and justifiable.¹³⁵ For example, in the case of grain, it is to the interest of both grain growers and consumers that the rates on that commodity from the grain fields in the West to the points of consumption should be as low as possible;¹³⁶ lumber is an inexpensive freight, and only a few other commodities furnish to carriers so large a tonnage; the rates thereon should therefore be relatively low;¹³⁷ coal rates are usually highly competitive, and this

¹³³ *Ozark Fruit Growers Association v. St. L. & S. F. Rd. Co. et al.*, 16 I. C. C. R. 106 (1909).

¹³⁴ *Colorado Fuel & Iron Co. v. Southern Pacific Co. et al.* (1895), 6 I. C. C. R. 488.

¹³⁵ *In Re Food Products Investigation* (1890), 4 I. C. C. R. 48; 3 I. C. R. 93; *National Hay Association v. L. S. & M. S. Ry. Co. et al.* (1902), 9 I. C. C. R. 264.

¹³⁶ *Re Alleged Unlawful Rates and Practices in Transportation of Grain* (1897), 7 I. C. C. R. 240.

¹³⁷ *Central Yellow Pine Association v. Ill. Cent. Rd. Co. et al.* (1905), 10 I. C. C. R. 505.

fact, together with its desirability as traffic and the large quantities moved, have produced on the average a very low rate;¹³⁸ salt is an article which demands and receives low rates;¹³⁹ soap is an article used by everybody, and of necessity, therefore, should be transported at a low rate;¹⁴⁰ for the same reasons pig-iron, iron articles, cement, stone, grain products, etc., require and are given relatively low commodity rates.

¶ Q. LOW RATES FOR CARRIAGE OF LONG-HAUL TRAFFIC.

The necessity for making concessions to *long-haul* traffic in the case of articles whose value, in proportion to bulk or weight, is small, and especially in that of the necessities of life, which are handled in large quantities, and in the supply of which the most distant countries compete, has long been conceded wherever railroads exist. The household goods of immigrants to West have been carried for them at very low rates, and the results of their agriculture have afterwards been taken for seaboard and European markets in recognition of the general principle that the traffic must not be charged rates beyond *what it can bear*.¹⁴¹

This is a just and sound principle when justly applied; and the country may be said not only to have acquiesced in its recognition, but to have desired and urged its application in a great variety of cases. Any suggestion that it was meant by the statute to abrogate it would scarcely be plausible, especially since, when not misapplied, it can harm no one, but may be, and often is, of great and manifest advantage in enabling distant sections of the country to come into closer commercial relations, and to exchange, to their mutual benefit, their dissimilar productions, and to compete

¹³⁸ Denison Light & Power Co. v. M. K. & T. Ry. Co. (1904), 10 I. C. R. R. 337.

¹³⁹ Anthony Salt Co. v. Mo. Pac. Ry. Co. et al. (1892), 5 I. C. C. R. 299; 4 I. C. R. 33.

¹⁴⁰ Procter & Gamble Co. v. C. H. & D. Rd. Co. et al. (1890), 4 I. C. R. 87; 3 I. C. R. 131.

¹⁴¹ Re Southern Railway & Steamship Association (1887), 1 I. C. C. R. 31; 1 I. C. R. 278.

with each other in those which are similar. However, there is a plain limit to the application of the principle that property is to be carried at rates it will bear; and the limit is reached when the rates charged are so low that further reduction would necessitate an increase of the charges on other traffic in order to make up to the carrier such loss as the reduction causes.¹⁴²

¶ R. CARRIER SERVING UNDEVELOPED TERRITORY ENTITLED TO HIGHER RATES.

A carrier serving a defendant upon a new and undeveloped territory, and unable to earn any profit for its owners, may charge higher rates than would be reasonable under different conditions.¹⁴³

¶ S. RATES ESTABLISHED TO DEVELOP A PARTICULAR INDUSTRY.

Where a rate has been established and maintained for a considerable period for the purpose of developing a particular industry, and with full knowledge that the industry could not be developed without it, and where, under the influence of such rate, large amounts of money have been invested in property, the value of which must be seriously impaired by an advance of the rate, that fact is an important consideration in passing upon the reasonableness of such advance.¹⁴⁴

¶ T. DESIRE OF CARRIER TO KEEP CERTAIN TRAFFIC UPON ITS LINE.

Rates established by a common carrier under the influence of a desire to keep upon its line a material for which the road itself has use, or to keep the price thereof low for its own advantage, cannot be justified either in morals or in law. Every party who produces such a material is entitled to sell it when he wishes, in the best available market, and

¹⁴² Re Southern R. & S. S. Assn., 1 I. C. C. R. 31, 1 I. C. R. 278.

¹⁴³ Memphis Freight Bureau v. Ft. S. & W. Rd. Co. (1907), 13 I. C. R. 1.

¹⁴⁴ Western Oregon Lbr. Mfrs. Assn. v. Southern Pacific Co. et al., 14 I. C. C. R. 61.

the common carrier has no right to prevent his doing so by disproportionate or unreasonable rates.¹⁴⁵

¶ U. TONNAGE SHIPPED BY A PARTICULAR FIRM.

While the amount shipped by a concern has little or no bearing on the question of the reasonableness of the rates, it is of some significance where the shipments reach substantial proportions.¹⁴⁶

¶ V. RATES FIXED ACCORDING TO THE USAGE OF THE COMMODITY OR "BUSINESS MOTIVE" OF THE SHIPPER ARE UNREASONABLE AND UNLAWFUL.

The concurrent existence of two separate and distinct rates on the same commodity is condemned when the traffic moves over the same route in the same direction, between the same points, and the carriers, by their published tariffs, assume to charge one rate or the other according to the ultimate use to which the commodity is to be put.¹⁴⁷

Tariffs which apply rates upon commodities according to their use or the "business motive" of the shipper are improper. The carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put. The duty of a common carrier is to transport commodities at the tariff rates and on equal conditions for all.¹⁴⁸

¶ W. EQUALIZING RATES OF DIFFERENT CARRIERS.

There is no provision in the law requiring that rates shall be the same over all lines between the same points.¹⁴⁹ A carrier with a long route, is not obliged, as a matter of law, to meet the rates of a short-line competition.¹⁵⁰ Neither is

¹⁴⁵ Reynolds v. W. N. Y. & P. R. Co. et al. 1 I. C. R. 685.

¹⁴⁶ Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. et al. (1909), 17 I. C. C. R. 30.

¹⁴⁷ Ft. Smith Frt. Bureau v. St. L. & S. F. Rd. Co. et al., 13 I. C. C. R. 651; Duncan v. A. T. & S. F. Ry. Co. et al., 6 I. C. R. 85.

¹⁴⁸ Ibid.

¹⁴⁹ Marley & Son v. N. & W. Ry. Co., 11 I. C. C. R. 616.

¹⁵⁰ Commercial Coal Co. v. B. & O. Rd. Co. et al., 15 I. C. C. R. 11; Johnson v. St. L. & S. F. Rd. Co. (1907), 12 I. C. C. R. 73.

a carrier via a long route obliged, as a matter of law, to reduce its rate because its short-line competitor reduces a rate which has been the same via both routes.¹⁵¹

A carrier is free to fix its rates without reference to those of other carriers competing for business from the same or different points of supply.¹⁵²

A rate is not unreasonable simply because a lower rate is in effect via the lines of other carriers.¹⁵³ The existence of a lower rate by the short line, while having some bearing, does not of itself indicate the unreasonableness of a higher rate by the route actually used.¹⁵⁴ The carriers in the through route over which the traffic moves would be guilty of a penal offense under the statute, if they should rebate the difference between their published rate for the longer haul and the published rate of other carriers over the shorter route.¹⁵⁵

Whatever may have been the practice in the past of "meeting the rate," the Act, and the decisions of the Commission interpreting its provisions, unmistakably lay down the doctrine that tariffs must now be adhered to.¹⁵⁶

¶ X. LOWER RATES FOR INLAND MOVEMENT OF IMPORT OR EXPORT TRAFFIC THAN FOR DOMESTIC TRAFFIC.

See *Section 364, post*.

¶ Y. IMPORTED MERCHANDISE NOT ENTITLED TO INLAND PROPORTIONAL RATE WHEN THE TRANSPORTATION FROM THE PORT IS PURELY LOCAL.

An importer of flax, after unloading a cargo at the port, sold it, and the purchaser some months later sold a part

¹⁵¹ Commercial Coal Co. v. B. & O. R. Co., 15 I. C. C. R. 11; Johnson v. St. L. & S. F. R. Co., 12 I. C. C. R. 73.

¹⁵² Allen & Lewis v. Oregon Rd. & Nav. Co. et al. (1899), 93 Fed. Rep. 16; s. c. 106 Fed. Rep. 265.

¹⁵³ South Canon Coal Co. v. C. & S. Ry. Co. et al. (1909), 17 I. C. C. R. 286.

¹⁵⁴ Marley & Son v. N. & W. Ry. Co., 11 I. C. C. R. 616.

¹⁵⁵ Ibid.

¹⁵⁶ Menefee Lumber Co. v. T. & P. Ry. Co. et al. (1909), 15 I. C. C. R. 49.

of the original shipment to a manufacturing company, by which it was shipped to a point in the middle West at the regular local rate of the carrier that took the movement. At the time there was in effect an inland proportional rate from the port of destination: *Held*, That the movement from the port was a separate and distinct transaction upon which the local rate was the only lawfully applicable rate.¹⁵⁷ It should be noted in this case that the shipment lost its identity as an import after having been held in warehouse by the purchaser at port of entry.

¶ Z. GRADUATED RATES.

The general rule contemplated by the Statute of equitably graduated charges on like traffic with reasonable reference to the amount of the service is just in itself, and commonly most beneficial both to the carriers and to the public, and is only to be departed from when justified by exceptional conditions, and in such instances no longer than the conditions require.¹⁵⁸

The Commission in considering rates to Pacific Coast Terminals from points east of the Missouri River stated that nothing in the Act would prevent transcontinental lines from putting into effect, if they saw fit, a system of graded rates so that Chicago and other intermediate points would take lower rates to the Pacific Coast than points on the Atlantic seaboard.¹⁵⁹

¶ AA. GROUP OR "BLANKET" RATES.

In the transportation of low-grade commodities that move in bulk and in large quantities, such as coal, lumber, grain, etc., it is a long established custom to group or "blanket" a number of stations or a large expanse of territory. Such rate adjustment, necessarily, to some extent, disregards dis-

¹⁵⁷ Rule 170, Con. Rul. Bul. No. 4 (April 13, 1909).

¹⁵⁸ *Lehmann, Higginson & Co. v. Southern Pacific Co.* (1890), 3 I. C. R. 80; 4 I. C. C. R. 1.

¹⁵⁹ *Business Men's League of St. Louis v. A. T. & S. F. Ry. Co. et al.* (1902), 9 I. C. C. R. 318.

tance. In the case of grain moving from points of origin, if strictly distance rates were applied, it is apparent that a certain distance from a market that is prepared to purchase the surplus the rate would be prohibitive.¹⁶⁰ Therefore, in all cases of "blanket" or group rates there is, of necessity, more or less disregard of distance and varying degrees of inequality, but such inequalities are not of necessity unreasonable or unjust when the situation is viewed from every standpoint, taking into account all interests.

Absolute and demonstrable equality in all respects is not attainable. Reasonable approximation is the most that can be expected ordinarily. Though not always the case, these grouping or blanket arrangements in many cases, especially with reference to particular commodities, are of great advantage to the public and without serious injustice to any interests.¹⁶¹

In the interest of the shipping and consuming public a carrier has the undoubted right to consider within proper limitations the conditions under which industries on its lines in the same general territory with other industries are compelled to conduct their business. One of these conditions may be a handicap of higher rates on raw material. Groups in rate-making are, therefore, made largely with respect of business as distinguished from transportation conditions. In other words, grouping is done with a reasonable disregard to commercial conditions.¹⁶²

For instance, as coal is one of the principal necessities of life, it would not be in the public interest to enhance the cost to consumers by compelling a higher rate from more distant points in a particular coal district, to which a group rate is applied, for the purpose of increasing the profits of

¹⁶⁰ *Kansas City Transportation Bureau, etc., v. A. T. & S. F. Ry. Co. et al.* (1909), 16 I. C. C. R. 195.

¹⁶¹ *Chicago Lbr. & Coal Co. et al. v. Tioga S. E. Ry. Co. et al.* (1909), 16 I. C. C. R. 323.

¹⁶² *Avery Mfg. Co. et al. v. A. T. & S. F. Ry. Co. et al.* (1909), 16 I. C. C. R. 20; *Imperial Coal Co. v. P. & L. E. Rd. Co. et al.* (1889), 2 I. C. C. R. 618; 2 I. C. R. 436.

miners more favorably situated with respect to a common market.¹⁶³ Of course, the propriety of the application of a group rate is open to challenge in every case, and every case must be justified upon its own facts and peculiar circumstances.¹⁶⁴ To make such rates illegal, however, they must operate to subject some shipper, locality or species of traffic to undue or unreasonable disadvantage.¹⁶⁵

When the difference in the transportation expense from the various parts of a given district is considerable and substantial group rates should not be encouraged.¹⁶⁶

¶ BB. RATE-PER-TON-PER-MILE RULE.

The rule that cost of carriage is usually in inverse ratio to distance and that therefore the charge per ton per mile should diminish with distance is not a requirement of the Statute, and is subject to qualifications and exceptions.¹⁶⁷ It is usually applied in cases of continuous carriage over long through routes, but even then special conditions, such as volume of business, character of route and necessary revenue from the business done so as not to perform the service at the expense of traffic at other points, may materially qualify it.¹⁶⁸ It is not inconsistent with the law, however, for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short hauls,

¹⁶³ *Imperial Coal Co. v. P. & L. E. Rd. Co. et al.* (1889), 2 I. C. C. R. 618; 2 I. C. R. 436.

¹⁶⁴ *Howell v. N. Y. L. E. & W. Rd. Co. et al.* (1888), 2 I. C. C. R. 272; 2 I. C. R. 162; *Imperial Coal Co. v. P. & L. E. Rd. Co.*, supra.

¹⁶⁵ *Hilton Lumber Co. v. W. & W. Rd. Co. et al.* (1901), 9 I. C. C. R. 17; *La Crosse M. & J's Union v. C. M. & St. P. Ry. Co. et al.* (1888), 1 I. C. C. R. 629; 2 I. C. R. 9; *Lippman & Co. v. Ill. Cent. Rd. Co.* (1889), 2 I. C. C. R. 584; 2 I. C. R. 414.

¹⁶⁶ *Newland et al. v. Northern Pacific Rd. Co. et al.* (1894), 6 I. C. C. R. 131; 4 I. C. R. 474.

¹⁶⁷ *Manufacturers' and Jobbers' Union, etc., v. M. & St. L. R. Co. et al.* (1890), 4 I. C. C. R. 79; 3 I. C. R. 115; affirmed in *Hilton Lbr. v. W. & W. Rd. Co. et al.* (1901), 9 I. C. C. R. 17.

¹⁶⁸ *Manufacturers' and Jobbers' Union, etc., v. M. & St. L. R. Co. et al.* (1890), 4 I. C. C. R. 79; 3 I. C. R. 115.

and to widen the disparity between such rates as the difference in distance increases.¹⁶⁹

The rate-per-ton-per-mile rule brings rates down to the narrowest point of scrutiny, and for that purpose is valuable, but it excludes consideration of other circumstances and conditions which enter into the making of rates, no matter how compulsory, or imperious they may be, and it cannot, therefore, be accepted as controlling in determining the reasonableness of rates.¹⁷⁰

The rate-per-ton-per-mile rule is not the generally accepted basis for making rates in this country, so far at least as interstate movements are concerned.¹⁷¹

¶ CC. CONSIDERATIONS DETERMINING THE REASONABLENESS OF EXPRESS RATES.

The rates made by express companies upon small packages in competition with the United States mail are not to be taken as standards by which to determine the reasonableness of their rates upon larger packages.¹⁷²

Most express matter is moved upon what is termed a merchandise rate. For the purpose of determining the rate applicable to packages of different size, what is known as a "graduate" scale is employed, this being a tabulation showing the rates applicable to a package of a given size between two points when the base rate or the rate per 100 pounds is known.¹⁷³

The fact that express rates in and out of a particular business locality are higher than those in and out of a competing locality from a common source of supply is not of the same importance as in the case of freight rates, since

¹⁶⁹ *Colorado Fuel & Iron Co. v. Southern Pacific Co. et al.* (1895), 6 I. C. C. R. 488.

¹⁷⁰ *Business Men's Ass'n, etc., v. C. St. P. M. & O. Rd. Co.* (1888), 2 I. C. R. 41, 2 I. C. C. R. 52; *Gustin v. A. T. & S. F. Ry. Co.* (1899), 8 I. C. C. R. 277; *Cedar Hill Coal & Coke Co. v. C. & S. Ry. Co.* (1909), 16 I. C. C. R. 387.

¹⁷¹ *Bulte Milling Co. v. C. & A. R. Co.* (1909), 15 I. C. C. R. 351.

¹⁷² *Kindel v. Adams Express Co. et al.* (1908), 13 I. C. C. R. 475.

¹⁷³ *Ibid.*

the wholesaler ordinarily brings his merchandise in by freight and also distributes it by freight.¹⁷⁴

Within certain limits express rates and freight rates compete, and to that extent express rates should be established with reference to freight rates.¹⁷⁵

The main object of an express service is expedition and express rates should not be so low as to attract business which might properly go by freight and thereby congest and interfere with service by express.¹⁷⁶

In determining the reasonableness of express rates but little reference can be had to the value of the property employed, since the connection between the value of the service and the cost of the property employed in rendering it is but slight.¹⁷⁷

In determining whether express charges are reasonable, inquiry must be had into the character of the business, the amount of capital required for its conduct, the hazard involved, and, especially, the profits which the express company is then making under the rates attacked.¹⁷⁸

A comparison of express rates in one locality with those in another is of much greater value than a similar comparison between freight rates, since the character of the business and the conditions under which it is transacted are more clearly the same.¹⁷⁹

¶ DD. FILING SCHEDULE OF RATES WITH COMMISSION RAISES NO PRESUMPTION OF REASONABLENESS.

No presumption of law that a freight rate upon a particular commodity is reasonably low exists because such rate has been duly published and filed by the carrier with the Interstate Commerce Commission.¹⁸⁰

¹⁷⁴ *Kindel v. Adams Exp. Co.* (1908), 13 I. C. C. R. 475.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ill. Cent. Rd. Co. v. I. C. C.* (1907), 206 U. S. 441; 51 L. ed. 1128; 27 Sup. Ct. 700; *San Bernardino Board of Trade v. A. T. & S. F. Ry. Co. et al.* (1890), 3 I. C. R. 138; 4 I. C. C. R. 104.

¶ EE. ENFORCEMENT OF RULES AND REGULATIONS NOT SHOWN
IN PUBLISHED TARIFF AS AFFECTING THE REASONABLE-
NESS OF THE RATE.

The sixth section of the Act to Regulate Commerce requires that tariffs shall "state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and charges, or the value of the service rendered to the shipper or consignee."

The main purpose of this provision is to prevent unjust discrimination between shippers by making it possible for them to readily ascertain from the tariffs just what aggregate charges are to be assessed, and the law is specific to the effect that carriers shall not demand "a greater or less or different compensation than the rates and charges specified in the tariff filed and in effect at the time."¹⁸¹

In the case of *Voorhees v. A. C. L. Rd. Co., et al.*,¹⁸² the complainant shipped six carloads of cabbage from St. Andrews, S. C., to New York City, for the transportation of which the defendants charged their less than carload rate, because the initial carrier performed the loading service; *Held*, That these shipments having been offered in carload quantities were entitled to the published carload rate, and in the absence of specific tariff provisions no additional charge could be lawfully collected from complainant to cover the loading service performed by the railroad company.¹⁸³

A rule providing who shall load and unload the freight transported (i. e., whether the shipper or carrier), directly affects the rate, since it determines the value of the service to the shipper.¹⁸⁴

¹⁸¹ *Voorhees v. A. C. L. Rd. Co. et al.* (1909), 16 I. C. C. R. 42.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ *Wholesale Fruit & Produce Association v. A. T. & S. F. Ry. Co. et al.* (1908), 14 I. C. C. R. 410.

¶ FF. ONUS PROBANDI AS TO REASONABLENESS OF INCREASED RATE ON COMMON CARRIER.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that at any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of that amendment, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and that the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.¹⁸⁵

¶ GG. PRESUMPTION WHERE LONG-ESTABLISHED RATE IS ADVANCED FOR A SHORT PERIOD AND THEN REDUCED TO THE FORMER BASIS.

See *Section 413, Paragraph D, ante*.

§ 94. Regulations and Practices affecting Rates.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*), makes it the duty of all common carriers subject to its provisions to establish, observe, and enforce just and reasonable regulations and practices affecting rates, and prohibits every unjust and unreasonable regulation and practice and declares such unlawful.

§ 95. Comparison of Rates.

¶ A. NECESSITY FOR COMPARISON OF RATES.

A rate can seldom be considered "in and of itself." It must be taken almost invariably in relation to and in connection with other rates. The freight rates of this country, both upon different commodities and between different localities are largely interdependent, and it is the fact that they do not bear a proper relation to one another, rather than

¹⁸⁵ Act to Regulate Commerce, Section 15 (*as amended June 18, 1910*).
C. R. 415.

the fact that they are absolutely too low or too high, which most often gives occasion for complaint.¹⁸⁸

¶ B. COMPARISON OF RATES ON DIFFERENT LINES IN DIFFERENT SECTIONS OF THE COUNTRY.

While the revenue per ton per mile over other routes on other lines and to other destinations is often suggestive in arriving at a proper estimate of the reasonableness of a rate over a route complained of, it is by no means conclusive.¹⁸⁹ It is a matter of common knowledge that freight rates are controlled by various and varying conditions, and therefore the rates established in one section of the country furnish no reliable standard by which to measure the reasonableness of rates in another section where dissimilar conditions prevail.¹⁹⁰ Such rates therefore can have no evidentiary bearing unless substantial similarity in transportation conditions is shown.¹⁹¹ Varying conditions existing on different lines must, of necessity, justify differences in rates for hauls of the same distance. The real question in any such complaint is the reasonableness of the particular rate on the particular line between the particular points in question.¹⁹² In testing such a rate the rates on the same or adjacent lines in the immediate territory where the same conditions exist are of much greater significance and afford a much more accurate basis for action by the Commission.¹⁹³

¹⁸⁸ *Tileston Milling Co. v. Northern Pacific Ry. Co.* (1899), 8 I. C. C. R. 346.

¹⁸⁹ *Dallas Freight Bureau v. G. C. & S. F. Ry. Co. et al.* (1907), 12 I. C. C. R. 223.

¹⁹⁰ *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. et al.* (1909), 17 I. C. C. R. 30; *I. C. C. v. L. & N. Rd. Co.* (1896), 73 Fed. Rep. 409; *Cattle Raisers' Assn. v. M. K. & T. Ry. Co. et al.* (1905), 11 I. C. C. R. 296; *New Orleans Cotton Exchange v. Ill. Cent. Rd. Co. et al.* (1890), 3 I. C. C. R. 534; 2 I. C. C. R. 777; *Business Men's Assn. v. C. St. P. M. & O. Ry. Co.* (1888), 2 I. C. C. R. 52; 2 I. C. R. 41; *Dallas Freight Bureau v. M. K. & T. Ry. Co. et al.* (1907), 12 I. C. C. R. 427.

¹⁹¹ *Evans v. N. P. Ry. Co. et al.* (1896), 6 I. C. C. R. 520.

¹⁹² *Dallas Freight Bureau v. G. C. & S. F. Ry. Co. et al.* (1907), 12 I. C. C. R. 223.

¹⁹³ *Ibid.*

¶ C. COMPARISON OF RATES ON DIFFERENT BRANCHES OR LINES OF SAME CARRIER.

Where the reasonableness of rates is in question, comparison may be made with the rates on different branches or lines of the same carrier; the value of the comparison being dependent in all cases upon the *degree* of similarity of circumstances and conditions attending the transportation for which the rates compared are charged.¹⁹⁴

¶ D. COMPARISON OF RATES ON RIVAL LINES.

Transportation rates in force on lines of rival carriers are entitled to consideration in connection with the question of reasonable charges for transportation services rendered under like conditions.¹⁹⁵

While, however, it is competent to compare rates and distances on different roads in dealing with an alleged unreasonable rate these are to be considered in connection with the many other factors that enter into the adjustment of rates.¹⁹⁶

¶ E. DIVISION OF THROUGH RATE NO CRITERION BY WHICH TO MEASURE LOCAL RATES.

A part of a through rate may legally be less than the local rate between the same or less distant points.¹⁹⁷

Where two connecting carriers unite by putting in force a joint through tariff between two points, such joint tariff is not the standard by which the reasonableness of the local tariff is to be determined.¹⁹⁸

¹⁹⁴ *Frt. Bureau of Cincinnati v. C. N. O. & T. P. Ry. Co. et al.* (1894), 6 I. C. C. R. 195; 4 I. C. R. 592; *Morrell v. Union Pacific Ry. Co.* (1893), 6 I. C. C. R. 121; 4 I. C. R. 469.

¹⁹⁵ *Morrell v. Union Pacific Ry. Co. et al.* (1893), 6 I. C. C. R. 121; 4 I. C. R. 469.

¹⁹⁶ *Cannon v. M. & O. Rd. Co.* (1906), 11 I. C. C. R. 537.

¹⁹⁷ *Parsons v. C. & N. W. Ry. Co.*, 167 U. S. 447; 17 Sup. Ct. Rep. 887; 42 L. ed. 231, affirming 63 Fed. Rep. 903; 11 C. C. A. 489; *Tozer v. United States* (1892), 52 Fed. Rep. 917.

¹⁹⁸ *Parsons v. C. & N. W. Ry. Co.* (1894), 63 Fed. Rep. 903; 11 C. C. A. 489; 27 U. S. App. 394, affirmed 167 U. S. 447; 17 Sup. Ct. Rep. 887;

The division of a through rate between carriers in a line of transportation furnishes no fair or just criterion by which to measure the intermediate local rates on the same line of transportation.¹⁹⁹

The Supreme Court has held that the fact that a disparity between through and local rates is considerable will not, of itself, be regarded as conclusive evidence of undue discrimination.²⁰⁰

It is consistent with the law for a carrier, within reasonable limits, to accept less per ton per mile upon long hauls than upon short hauls and to widen the disparity between such rates as the difference in distance increases. Hence the proportion received by certain carriers out of a long distance through rate is not necessarily the measure of the through rate which such carriers are entitled to make over a materially short distance, though such proportion is an important consideration in determining the rightful relation of the through rates.²⁰¹

If the carriers participating in a joint through rate desire to reduce or increase the separately established local

42 L. ed. 231; *C. & N. W. Ry. Co. v. Osborne* (1892), 52 Fed. Rep. 912; 3 C. C. A. 347.

¹⁹⁹ *McMorran et al. v. Grand Trunk Ry. Co. et al.* (1889), 3 I. C. C. R. 252; 2 I. C. R. 604; *Acme Cement Plaster Co. v. L. S. & M. S. Ry. Co. et al.* (1909), 17 I. C. C. R. 30; *Board of Trade, etc., v. N. & W. Ry. Co.* (1909), 16 I. C. C. R. 12; *Omaha Cooperage Co. v. N. C. & St. L. Ry. Co. et al.* (1907), 12 I. C. C. R. 250; *New Orleans Cotton Exchange v. Ill. Cent. Rd. Co. et al.* (1890), 3 I. C. C. R. 534; 2 I. C. R. 777; *C. & N. W. Ry. Co. v. Osborne* (1892), 52 Fed. Rep. 912; 3 C. C. A. 347, reversing 48 Fed. Rep. 49; *U. S. v. Mellen* (1892), 53 Fed. Rep. 229; *James & Abbott v. Canadian Pacific Ry. Co. et al.* (1893), 5 I. C. C. R. 623; 4 I. C. R. 274; *Mayor, etc., of Wichita v. A. T. & S. F. Ry. Co. et al.* (1903), 9 I. C. C. R. 558; *Railroad Commissioners of Ky. v. C. N. O. & T. P. Ry. Co. et al.* (1897), 7 I. C. C. R. 380.

²⁰⁰ *T. & P. Ry. Co. v. I. C. C.* (1896), 162 U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 940; see *Parsons v. C. & N. W. Ry. Co.* (1894), 63 Fed. Rep. 903; 11 C. C. A. 489, affirmed 167 U. S. 447; 42 L. ed. 231, 17 Sup. Ct. 887.

²⁰¹ *Colorado Fuel & Iron Co. v. Southern Pacific Co. et al.* (1895), 6 I. C. C. R. 488.

rates via the same route, the order of the Commission requiring the maintenance of a joint through rate is no bar to their doing so.²⁰²

¶ F. DIVISION OF THROUGH RATE NOT CONCLUSIVE EVIDENCE OF REASONABLENESS OF THROUGH RATE ITSELF.

Under the law as construed by the Commission, a joint through rate is a unit, an entirety, with the divisions or component parts of which the public is not concerned unless the joint rate as a whole is illegal.^{202a}

Although a shipper or consignee has no direct interest in the way a joint rate is divided between the carriers, nor in the amount of the division received by each carrier, he is entitled, nevertheless, to inquire into such division when he complains that the joint rate is unlawful, for the amount received by the different carriers may be significant upon the reasonableness of the aggregate charge.²⁰³

Only when the public or a shipper complains of the illegality of a joint through rate as a whole can one or more of the divisions of such rate be inquired into to determine if the illegality of the whole rate is traceable to the illegality of a specific part thereof.^{203a}

While a division of a through rate long accepted by a carrier may often be pertinent evidence, it is not a sound final test of the reasonableness of the through rate itself;²⁰⁴ and when an unlawful rate results from some arbitrary share or division exacted by one of the carriers, the Commission will find the facts and state its conclusion with respect to such share or division.²⁰⁵

If the through rates are not unreasonable, the Commission can not condemn the same on account of the divisions thereof

²⁰² *Michigan Buggy Co. v. G. R. & I. Ry. Co.*, 15 I. C. C. R. 299.

^{202a} *Copper Queen Consolidated Mining Co. v. B. & O. R. R. Co. et al.* (1910), 18 I. C. C. R. 154.

²⁰³ *Warren-Ehret Co. v. C. R. R. of N. J. et al.*, 8 I. C. C. R. 598.

^{203a} See note 202a *supra*.

²⁰⁴ *Bulte Milling Co. et al. v. C. & A. Rd. Co. et al.* (1909), 15 I. C. R. 351.

²⁰⁵ *Warren-Ehret Co. v. C. R. R. of N. J. et al.*, 8 I. C. C. R. 598.

to the various roads forming the through lines, the law and the public being alike served by rates in the aggregate reasonable and not affected by their distribution.^{205a}

¶ G. RATES ESTABLISHED BY STATE AUTHORITY AS STANDARDS
IN FIXING INTERSTATE RATES.

A railroad is not bound to accept a schedule of rates established by State authority as the measure of its charges on interstate traffic.²⁰⁶

Neither is the Interstate Commerce Commission, whose jurisdiction is exclusive over interstate rates, controlled by the rates established by State Railroad Commissions.²⁰⁷

While upon general principles of comity the action of a State Commission in fixing a rate on State traffic must be treated with all due respect, the Commission has never felt itself bound to accept a State-made rate as a necessary measure of an interstate rate.^{207a}

There are many reasons, however, why State and interstate rates should be established in harmony with one another. When the Commission is asked to examine the reasonableness of an interstate rate, similar rates, established by State authority in that territory, must have great influence, especially when they have been acquiesced in by carriers. Still these State rates have no binding force upon the Commission. They are standards of comparison of greater or less value, according as they appear to be just and reasonable.²⁰⁸

Rates established by State authority are presumed to be reasonable, but the same presumption also attaches to rates

^{205a} *Charlotte Shippers' Asso. v. S. Ry. Co.*, 11 I. C. C. R. 108.

²⁰⁶ *Re Freight Rates between Memphis and Arkansas Points* (1905), 11 I. C. C. R. 180.

²⁰⁷ *Railroad Commission of Wisconsin v. C. & M. V. Ry. Co.* (1909), 16 I. C. C. R. 84; *Bartles Oil Co. v. C. M. & St. P. Ry. Co. et al.* (1909), 17 I. C. C. R. 146; *Marshall Oil Co. v. C. & N. W. Ry. Co. et al.* (1908), 14 I. C. C. R. 210.

^{207a} *Saunders & Co. et al. v. Southern Express Co.* (1910), 18 I. C. C. R. 415.

²⁰⁸ *Corn Belt Meat Producers' Association v. C. B. & Q. Ry. Co. et al.*, 14 I. C. C. R. 376.

voluntarily established by carriers, and in proceedings before the Commission, no greater sanctity can be presumed in favor of rates established by a State commission than those voluntarily established by carriers,²⁰⁹ and the Commission would not hesitate, upon proper evidence that a rate so established would be unjust either to a carrier or a shipper, to refuse to accept it as a basis for fixing an interstate rate.²¹⁰

¶ H. RELATION BETWEEN WATER AND RAIL TRANSPORTATION.

When the Congress was given power to regulate commerce among the States, railroads had no existence. To whatever extent the regulation so provided for was intended to include transportation charges, it must have had special reference to the then existing transportation methods, which were mainly by lake, river or coastwise carriers.

The regulation for which provision is made in the Act to Regulate Commerce does not apply to commerce as it was conducted when the power to regulate was conferred upon Congress. The Act applies to water transportation only when "used under a common control, management or arrangement for a continuous carriage or shipment in connection with a railroad," and as part of a line or route of which another part is a railroad, and leaves carriers engaged in transportation wholly by water independent of regulation.

The exemption of so considerable a part of transportation from the operations of the law has an important bearing upon the railroad rates of the country.

The construction and maintenance of the way or track is a principal item in the cost of railway transportation, while the permanent way over navigable waters is free from all expense, and is maintained at public cost. In water transportation, carriers provide only the vessel or vehicle of carriage. There is, therefore, a wide difference in the cost of rail and water service, and water transportation charges can be very much the lower and still be remunerative.

²⁰⁹ Paola Refining Co. v. M. K. & T. Ry. Co. (1909), 15 I. C. C. R. 29.

²¹⁰ Hope Cotton Oil Co. v. Texas & Pacific Ry. Co. et al. (1907), 12 I. C. C. R. 266.

Carriers by water are not required to publish rates, and are under no restrictions as to rebates, discriminations or preferences as to charges proportional as to distance. No stability is required in their charges, which may fluctuate as often as the exigencies of business rivalries dictate or the necessities for traffic render expedient. Whenever rail and water transportation are in direct competition, a reduction of rail rates to meet the water charges is essential to secure any part of the traffic.²¹¹

§ 96. Rates must apply according to Movement.

Upon the arrival of a shipment at the junction designated in the consignor's routing instructions it appeared that, because of a washout on its lines, the connecting carrier could not accept the movement. The shipper thereupon assumed custody of the shipment and forwarded it by a water line. *Held*, That the carrier must collect its local rate to the junction point, and cannot apply its proportion of the through rate.²¹²

In another case a mixed carload of meat, eastbound, was diverted at the Ohio River on account of a flood, and, by order of the shipper, was taken by a roundabout route to a point east of its destination, and was thence hauled westbound to destination. The mixed-carload rate applied on eastbound shipments, but the tariffs provided no mixed-carload rate on westbound shipments. *Held*, That such interruption of the eastbound movements would not justify the application of a mixed-carload rate on the westbound movement to destination.²¹³

So it is an entirely erroneous assumption that, where there are two or more lines with different rates between two points, a shipper may secure the application of the lowest rate by either of such lines, regardless of which one he uses.²¹⁴

²¹¹ Third Annual Report of I. C. C. (1889).

²¹² Rule 147, Con. Rul. Bul. No. 4.

²¹³ Rule 52, Con. Rul. Bul. No. 4 (March 11, 1908).

²¹⁴ Hill & Webb v. M. K. & T. Ry. Co. et al. (1909), 16 I. C. C. R. 569.

§ 97. Joint and Through Rates.

¶ A. JOINT RATE MATTER OF AGREEMENT BETWEEN CONNECTING CARRIERS.

The question of joint through rates is a matter of agreement between connecting carriers, and they may or may not enter into such agreements as they may think their interests demand.²¹⁵

However, it should be noted that this is subject to the power invested in the Interstate Commerce Commission by Section 15 of the Act, to establish through route and joint rates as the maximum to be charged, and prescribe the division of such rate when they may be necessary to give effect to any provision of the Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates.

Joint rates may be so divided between the carriers that each receives less than its established local rate, or so that the full local charge is secured by one or more of the carriers, the other party or parties accepting less than local rates; but whatever the basis of division, the essential feature of such rates is that the connecting carriers have agreed or mutually consented to carry traffic over the connecting line for a less aggregate charge than the sum of their established local rates.

In the absence of some agreement or understanding with a connecting line, by which a joint tariff of rates is authorized, a given carrier cannot lawfully publish or apply any other rates than those which it fixes for transportation between points reached by its railroad; and the rates so fixed are the only lawful rates which such carrier can charge for any transportation service which it may perform, whether the traffic carried is destined to points on its own road or to points on the line of some other carrier.

A carrier which has published and filed its rates, as the law requires, may combine such rates with the lawfully es-

²¹⁵ *Southern Pacific Co. v. I. C. C.* (1906), 200 U. S. 536; 26 Sup. Ct. Rep. 330; 50 L. ed. 585.

established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on its railroad to points on the line of such connecting carrier or carriers; but one carrier cannot lawfully add to the duly established rates of another carrier any amount it pleases less than its own local rates, and publish and use that sum as a rate to points on the line of such other carrier without its consent. Such a through rate is not a "joint rate," for joint rates can be made only by concurrence or assent; nor is it a combination rate, for one of its component parts has no legal existence or sanction as a separate or local charge; there must be lawful rates upon each of the roads before there can be a lawful combination of rates.²¹⁶

¶ B. BUT ONE LEGAL RATE CAN EXIST BETWEEN TWO POINTS
AT ANY TIME.

The Commission has held that there can be but one legal rate between two points—a very simple enunciation of a fundamental principle. This rate must be (a) the local rate if over one road, or (b) the joint rate over a through route composed of two or more roads which have agreed to a joint, or (c) a combination of separately established rates applicable on through business over a through route which does not enjoy a joint rate.²¹⁷

Two or more connecting carriers may establish a joint rate only upon notice of thirty days or under special permission. A joint rate, when duly established and in force, becomes the only lawful rate for through transportation.²¹⁸

A joint rate from point of origin to destination of a shipment is the lawful rate applicable to that movement, whether the rate be confined to the line of one carrier or be a joint rate applying over the lines of two or more carriers.²¹⁹

²¹⁶ *New York, N. H. & H. Rd. Co. v. Platt, Receiver* (1897), 7 I. C. C. R. 323.

²¹⁷ *Laning-Harris Coal & Grain Co. v. Mo. Pac. Ry. Co. et al.* (1908), 13 I. C. C. R. 154.

²¹⁸ Rule 55, Tariff Circular 17-A.

²¹⁹ *Ibid.*

A specific through rate is the lawful rate for a through shipment, even though some combination of rates may make lower, and the carrier may not charge the higher through rate upon one shipment and the lower combination rate upon another shipment of the same kind between the same points at the same time.²²⁰

The practice on the part of carriers of accepting and transporting through shipments, as to which no joint rate applies, upon rates made up by combination of the rates of the several carriers participating in the movement, and of collecting, as delivering carriers, the aggregate charges of the several carriers upon such shipments, and of accounting to such carriers for their several portions of such charges, is practically universal. That custom has the same binding effect as a joint rate, both as between carriers themselves and as between carriers and shippers. Therefore, carriers may apply to through shipments rates to and from points to and from which there is no applicable published joint rate, by using lawfully published bases, locals and proportionals in connection with other lawfully published tariffs.²²¹

¶ C. LEGAL RATE APPLICABLE TO AN INTERSTATE SHIPMENT IS THROUGH RATE IN EFFECT AT THE TIME THE SHIPMENT IS RECEIVED BY THE CARRIER.

In case a shipment has been made over two or more railroads which have not, as to the journey the shipment is to take, filed with the Commission a notice of through route and joint rate, as required by section 6 of the Act to Regulate Commerce, does the shipment take the sum of the local rates of the various lines over which it is moved, as such locals may be established at the time it is received by the initial carrier, or is it subject to changes in locals which may be made before the shipment reaches the lines making such changes? That is to say: a shipment is made over the A line to a connection with the B line, and thence over the B

²²⁰ Morgan et al. v. M. K. & T. Ry. Co. et al. (1907), 12 I. C. C. R. 525.

²²¹ Rule 5, Tariff Circular 15-A.

line to destination. The B line changes its locals after the shipment is billed at the point of origin, but before it has passed beyond the A line. Is the shipment subject to such change in rate of the B line, or does it move under rates in effect at the time it began its journey?

A careful consideration of all the factors entering into this problem shows that, in the last analysis, the answer must depend upon a question of fact, this question being: Have the carriers over whose lines the shipment is to move made an arrangement, express or implied, for a through route? If a through route has been so formed, then the rate charged must be a through rate, and the shipment will move upon the rate existing at the time it is billed. If, however, no through rate has been formed, then the shipment will move, not upon one through journey, but upon a succession of journeys, and will be subject to any change in rates made by any carrier into whose possession the shipment has not been received.

It needs no citation of authorities to prove that, at common law, a carrier may confine its business entirely to its own line. It need not make its line part of any through route to or from a point off its line unless it so chooses. As was pointed out by the United States Supreme Court in *A. T. & S. F. Rd. Co. v. D. & N. O. Rd. Co.*,²²² a carrier might, if it so pleased, receive freight from other carriers at any junction point in precisely the same capacity that it would receive freight from a wholesale house or other shipper doing business at such junction point. In such case, under the common law, its rates would apply as on the date of its billing, rather than upon the date of the billing by a connecting line.

There is no question that, where a joint rate has been made, and filed as such, over any through route, such rate takes effect as one charge, and shipments must be carried through on the rate in force at the time of the billing.

There may, however, be through routes without joint rates.

²²² *A. T. & S. F. Rd. Co. v. D. & N. O. Rd. Co.*, 110 U. S. 667; 28 L. ed. 291; 4 Sup. Ct. Rep. 185.

A joint rate is simply a through rate, every part of which has been made by express agreement between the carriers making the through route. The joint rate is a rate over a through route, but it is not the only through rate recognized by the Act and the decisions.

Among the important amendments made in 1906 to the Interstate Commerce Act was that which makes it the duty of every carrier subject to the Act "to establish through routes and just and reasonable rates applicable thereto." (Sec. 1.) It is not necessary here to attempt to discover the full force of these words. Their significance, however, is not to be grasped without consideration of that latter portion of the Act (Sec. 6) which expressly recognizes the possibility of a through route without a joint rate, and which, after directing the publication and filing of local rates and of joint rates, provides for still other rates in the following language: "*If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid the separately established rates, fares, and charges applied to the through transportation.*"

The reasons for this rule are at least two: (1) The policy of the law that every route and every service shall have a published rate equally known and equally available to all patrons of the carriers; and (2) the policy of the law that carriers otherwise not subject to the Act shall be, when participating in interstate business, subject to the Act to Regulate Commerce.

A through route is a continuous line of railway formed by an arrangement, express or implied, between connecting carriers. It may have a rate for every service it offers, and, as the route is a new unit—one line formed by two or more connecting lines—so its rate for every service is a unit, even though it be divided between the several carriers arranging themselves into the through route. As was said by the Commission in *Brady v. P. R. Co.*,²²³ "Through carriage implies a

²²³ *Brady v. P. R. Co.*, 2 I. C. C. R. 131; 2 I. C. R. 78.

through rate." This is equally true whether the through rate be published as a whole by the joint action of the connecting carriers, or, in the absence of a joint arrangement, be published in portions by the several carriers. The through route being one, a charge for a service over it is a charge for a single service, all the terms of which must be fixed at one and the same time; that is, at the time the initial carrier enters into the engagement for the service. The rate is either a joint through rate, made by arrangement by the parties to the through route, or it is a combination through rate consisting of "the separately established rates, fares and charges applied to the through transportation." This sum, however, is a single rate for a single service, and a contract for through transportation is a contract for transportation at the through rate, whether jointly or separately established, in force at the time the shipment is billed.²²⁴

Tariffs cannot be given a retroactive effect; they cannot be made to apply to conditions other than those existing upon the date when such tariffs become effective. A combination through rate is as binding, definite and absolute as a joint through rate; and all of the conditions, regulations and privileges obtaining as to any factor in such combination rate for through shipment, at the time of initial shipment upon such combination through rate, must be adhered to, and cannot be varied as to that shipment during the period of transportation of such shipment to its final destination.²²⁵

In a given case, freight was received by a carrier, and bills of lading were issued therefor on December 21 and 29, 1908. The freight was actually moved on January 1, 1909, on which date a lower rate went into effect. *Held*, That the rate in effect on the date the carrier received the property for transportation is the lawful rate.²²⁶

We therefore have the following rule:

"If no specific rate from point of origin to destination of

²²⁴ In the Matter of Through Routes and Through Rates (1907), 12 I. C. C. R. 164.

²²⁵ *Ibid*.

²²⁶ Rule 172, Con. Rul. Bul. No. 4 (May 4, 1909).

a through shipment is provided, and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rates applicable via the route over which the shipment moves is the lawful rate for that shipment.”²²⁷

“Such combination through rate must be treated as a unit from the date of original shipment to the date of its arrival at destination, and the rate applied must be the combination of the rates which exist upon the date of original shipment. All of the conditions, regulations and privileges obtaining as to any factor in such combination rate for through shipment, at the time of original shipment upon such combination through rate, must be adhered to, and cannot be varied as to that shipment during the period of transportation of such shipment to its final destination. A local or proportional rate ‘in’ cannot be absorbed, diminished or affected by any ‘out’ rate not in effect at the time when the traffic moved upon such local or proportional rate.”²²⁸

¶ D. CARRIERS MAY SPECIFY BASING POINTS OR FACTORS FOR
CONSTRUCTING COMBINATION RATE.

A carrier may provide in its tariff that, in the absence of a specific rate from point of origin to destination of a through shipment, combination rate to or via certain points will be made upon specified basing point or points, or by using certain specified tariffs or rates, and the combination rate so specified will be the lawful rate for the shipment.

If shipment moves to or from a point *directly intermediate to the base point upon which the lowest combination makes*, such combination must be applied; and it is not necessary to haul the shipment to such base point and back again to or through *point of origin or destination*.²²⁹

²²⁷ Rule 5, Tariff Circular 17-A.

²²⁸ Ibid.

²²⁹ Rule 5, Tariff Circular 17-A. NOTE: Neither this rule nor any portion thereof is to be construed as modifying or authorizing departure from the Commission’s ruling that a specific class or commodity rate between two points is the lawful rate between those points regardless of any combination rate. It must also be understood that in a case where the lowest combination of rates makes on a base

The words "*point of origin or destination*," as used above, are interpreted to include a junction point with a connecting or branch line, which is *directly intermediate to the base point*, upon which lowest combination makes and at which interchange is made.²³⁰

¶ E. RATE TO APPLY WHERE NO SPECIFIC METHOD OF CONSTRUCTING THROUGH RATE IS PROVIDED FOR.

If no specific rate from point of origin to destination of a through shipment is provided, and no specific manner of constructing combination rate for it is prescribed, the lowest combination of rate applicable via the route over which the shipment moves is the lawful rate for that shipment.²³¹

¶ F. RIGHT OF SHIPPER TO CONSIGN FREIGHT TO A GIVEN POINT, ASSUME CUSTODY AND RESHIP UNDER RATES LAWFULLY APPLICABLE TO SUCH RESHIPMENT.

It is well settled that a shipper has the right to consign a shipment to a given point, pay the charges upon it, assume custody and take possession of the property, and later reship it to another point under rates lawfully applicable to such reshipment.²³²

A carrier or carrier's agent may not, however, act as forwarding or reconsigning agent for the shipper for the purpose of evading or defeating the terms or purposes of the law, point as to which the point of origin or of destination is directly intermediate, a specific rate to or from such point that is higher than such combination is included in the Commission's ruling that a through rate that is higher than the combination of locals between the same points is *prima facie* unreasonable. It must be further understood that in applying the lowest combination when it makes upon a base point as to which the point of origin or of destination is directly intermediate, the Commission expresses no opinion as to the reasonableness of a rate so constructed.

²³⁰ Supplement 1 to Tariff Circular 17-A.

²³¹ Ibid.

²³² Wood Butter Co. v. C. C. C. & St. L. Ry. Co. et al. (1909), 16 I. C. C. R. 374, citing Morgan et al. v. M. K. & T. Ry. Co. et al. (1907), 12 I. C. C. R. 525; Montgomery Frt. Bureau v. W. Ry. of Alabama (1908), 14 I. C. C. R. 150.

or in such manner as to defeat or evade the intent of the law. To do that would be to resort to one of the devices prohibited in the Act.²³³

In the case of *Stockyards Cotton & Linseed Co. v. C., M. & St. P. Ry. Co. et al.*,²³⁴ there was a published through rate on oilmeal, carload, from Minneapolis, Minn., to Milo, Mo., of 33½ cents per 100 lbs., while there was a published rate of 10½ cents per 100 lbs. from Minneapolis, Minn., to Kansas City, and a rate of 7½ cents per 100 lbs. from Kansas City to Milo. The complainant attempted to secure the application of the two local rates to a shipment of oilmeal by billing it first to Kansas City, and then requesting the Milwaukee road to collect the charges up to Kansas City, deliver the car to the Missouri Pacific for carriage to Milo, and to secure a new bill of lading from Kansas City to Milo. The Milwaukee road, instead of complying with this request, corrected the billing to read from Minneapolis to Milo, and applied the through rate applicable to a through movement. The Commission decided that the defendant's action was proper, as a shipper cannot defeat the application of a joint through rate by constituting the carrier its agent to collect charges up to the junction point and reship the traffic to final destination.

A lawful through rate existed between two points, applicable over two routes, one of which was indirect, and, therefore, not ordinarily used by the carrier for through movements. The shipper billed locally to a point on the latter route, and rebilled to destination without taking either constructive or actual possession of the shipment at the local point, but making his rebilling arrangements with the agent of the carrier at a distant point. Upon arrival of the shipment at destination the carrier collected the balance of the through rate. *Held*, That the local billing was not in good faith, but was a device between the shipper and the carrier's agents to avoid the higher through rate, by having the car-

²³³ *Morgan v. M. K. & T. Ry. Co.*, supra.

²³⁴ *Stock Yards Cotton & Linseed Co. v. C. M. & St. P. Ry. Co. et al.* (1909), 16 I. C. C. R. 366.

rier's agents act as the forwarding agents of the shipper; therefore the through rate was the only rate lawfully applicable.²³⁵

¶ G. COMBINATION OF JOINT RATE TO COMMON POINT AND
LOCAL RATE BEYOND.

In order to secure uniformity in practice and understandings, and to remove the cause of many complaints, the Commission decided that, when a joint through rate is the same to two or more points, and rate on through shipment to local station, to which no specific joint through rate applies, is made up by combination of such joint through rate to common points, and local rate beyond, the rate for through shipment must be determined by calculating the joint through rate to the point from which the lower local rate applies to point of destination, and adding thereto such local rate. For example: Joint through tariff names the same rates from certain Eastern points to Chicago and Milwaukee. If shipment is destined to a point to which the local rate is less from Milwaukee than from Chicago, the rate applied should be the joint through rate to Milwaukee, plus the local rate from Milwaukee to destination, and unless the lines of delivering carrier reach both Chicago and Milwaukee, the shipment should move via Milwaukee. If the local rate from Chicago to point of destination is lower than from Milwaukee, the rate should be the joint through rate to Chicago, plus the local rate from Chicago to destination, and unless the lines of the delivering carrier reach both Milwaukee and Chicago the shipment should move via Chicago.²³⁶

Rates for outbound through movements from such local stations and under like circumstances must be applied on the same basis where the joint through rates are the same from two or more points.

²³⁵ Rule 98 Con. Rul. Bul. No. 4 (Oct. 12, 1908).

²³⁶ Rule 215, Con. Rul. Bul. 4 (March 18, 1907). This rule applied in *Larrowe Milling Co. v. C. & N. W. Ry. Co. et al.* (1910), 17 I. C. C. R. 443, same, 17 I. C. C. R. 548; *Rehberg & Co. v. Erie Rd. Co. et al.* (1910), 17 I. C. C. R. 508.

This does not authorize any carrier to apply to transportation over its lines any rate except those stated in its own lawfully published tariffs or in the lawfully published joint tariffs in which it has concurred. If a carrier desires to "meet the rate" of a competitor, it must do so by lawfully including in its own tariffs such specific rates, proportional or otherwise, as may be necessary so to do.²³⁷

The Commission suggested that shippers can assist in avoiding mistakes and misunderstandings, by calling attention to the rate that should apply in such cases as come under this rule by indicating it on shipping bill in connection with routing instructions; for instance, "Rate on Milwaukee." This is, however, merely a suggestion, and does not relieve the agents of carriers from the responsibility of quoting and applying the correct lawful rate.²³⁸

This rule does not apply in case where shipment has reached its destination as originally given by shipper and has been recognized, except when tariff contains reconsignment rule that provides for such application.²³⁹

This rule must not apply in any case where there is an applicable specific joint through rate from point of origin to point of destination.²⁴⁰

¶ H. JOINT THROUGH RATES TO AND FROM PORTO RICAN PORTS.

The Commission has stated that without deciding whether Porto Rico is to be regarded as a Territory of the United States as that phrase is used in Section 1 of the Act, it will recognize the validity of joint through rates from points in the United States to a port or ports in Porto Rico when properly concurred in by the water carriers, as well as the validity of joint through rates from a port or ports in Porto Rico to points in the United States when likewise concurred in by the water lines.²⁴¹

²³⁷ Rule 215, Con. Rul. Bul. 4 (March 18, 1907).

²³⁸ Ibid.

²³⁹ Ibid.

²⁴⁰ Ibid.

²⁴¹ Rule 201, Con. Rul. Bul. No. 4 (June 23, 1909).

¶ I. RATES NOT ON FILE WITH COMMISSION NOT LAWFUL FACTORS IN CONSTRUCTING THROUGH CHARGE.

Rates not on file with the Interstate Commerce Commission can not be used in constructing a through charge;^{241a} nor are they lawful facts to be considered by the Commission in the determination of the reasonableness of the joint rate.^{241b}

¶ J. CARRIER MAY NOT DENY BENEFIT OF JOINT RATE TO MANUFACTURERS ON CONNECTING LINES IN ORDER TO FOSTER INDUSTRIES ON ITS OWN LINE.

An interstate carrier, in order to build up enterprises of the same character on its own line and to prevent the trade of its local industries from being displaced by the competition of manufacturers of the same commodities on connecting line, cannot deny to industries on the lines of such connections the benefit of through routes and joint rates; nor is the fact that the revenues of the carrier may be reduced by establishing such through routes and joint rates a material consideration. It may be laid down as a general rule admitting of no qualification that a manufacturer or merchant who has traffic to move and is ready to pay a reasonable rate for the services has the right to have it moved and to have reasonable rates established for the movement, regardless of the fact that the revenues of the carrier may be reduced by reason of his competition with other shippers in the distant markets; and he has the right also to have the benefit of through routes and reasonable joint rates to such distant markets if no "reasonable or satisfactory or through" routes already exist. While the Commission's power to establish a through route and joint rate is limited to particular cases where a reasonable or satisfactory through route does not already exist, yet such power is not confined to cases where enforcements of the other provisions of the regulating statute is sought.²⁴²

^{241a} Hagar Iron Co. v. Pa. Rd. Co. et al. (1910), 18 I. C. C. R. 529.

^{241b} Milburn Wagon Co. v. L. S. & M. S. Ry. Co. et al. (1910), 18 I. C. C. R. 144.

²⁴² Cardiff Coal Co. v. C. M. & St. P. Ry. Co. et al. (1908), 13 I. C. R. 460.

¶ K. PARTIES NOT COMPETENT IN LAW TO ESTABLISH JOINT
RATES FOR INTERSTATE TRANSPORTATION.

Where a railroad company, stage line and hotel association joined together to form a through route and joint rates for the transportation of passengers from Eastern points to the Yellowstone National Park and for providing accommodations and stage transportation at such reservation, the Commission held, that such parties were not competent in law to form a through route and establish joint rates as provided in Section 6 of the Act to Regulate Commerce.²⁴³

**§ 98. Rates are not nullified by Failure of Carriers
to Agree upon Division Thereof.**

The Commission has held that the fact that the carriers, by which the rate had been lawfully published and advertised to the shipping world as the cost of transportation between two given points over all reasonably available routes, have neglected or failed to agree upon divisions of the rate over one of the routes cannot be accepted as equivalent to a nullification of the published through rate over that route. Divisions are matters of private agreement and for that reason, generally speaking, are of no special concern to shippers, nor are they essential to legalize a published through rate.²⁴⁴

§ 99. Discrimination in Rates for Transportation of Freight.

See *Section 364, post.*

§ 100. Free and Reduced-Rate Transportation of Property.

See *Chapter 21, post.*

**§ 101. Publication, posting and filing of Freight Rates
and Charges.**

See *Chapter 30, post.*

²⁴³ *Wylie v. Nor. Pac. Ry. Co. et al.* (1905), 11 I. C. C. R. 145; see also *Cary v. Eureka Spgs. Ry. Co. et al.* (1897), 7 I. C. C. R. 286.

²⁴⁴ *Germain Company v. N. O. & N. E. Rd. Co. et al.* (1909), 17 I. C. C. R. 22.

§ 102. Published Rates not to be deviated from.

The statute provides that no common carrier shall charge or demand or collect or receive for the transportation of property, or for any service in connection therewith, between the points named in such tariffs other than the rates and charges which are specified in the tariff filed and in effect at the time.²⁴⁵

See "*Rebates and Concessions*," Chapter 27, *post*.

§ 103. Offering, granting, giving, soliciting, accepting, or receiving any Rebate from Published Rate declared to be a Misdemeanor and Penalty Therefor.

See Section 389, *post*.

§ 104. Maintenance of Rate reduced after Complaint filed with the Interstate Commerce Commission.

¶ A. IN FORMAL CASES.

The Commission has decided that when after complaint made and after answer filed or before hearing a rate is reduced to the sum demanded by complaint the report disposing of the proceeding shall carry with it an order directing the defendant to maintain that rate as a maximum for not less than two years.²⁴⁶

¶ B. IN SPECIAL REPARATION CASES.

The Commission has decided that orders in special reparation cases shall include a clause providing that the new rate or regulation upon the basis of which reparation is granted shall be maintained for a period of at least one year.²⁴⁷

¶ C. DATE FROM WHICH TIME RUNS.

The Commission has held that the two years required for rates to be maintained in orders upon formal complaints and

²⁴⁵ Act to Regulate Commerce. Section 6.

²⁴⁶ Rule 11, Con. Rul. Bul. No. 4 (Dec. 2, 1907).

²⁴⁷ Rule 14, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

the one year required in orders in special reparation cases shall run from the date of the order and not from the date when the reduced rate or new regulation became effective.²⁴⁸

§ 105. Effect of Private Agreement between Carrier and Shipper concerning Charges for Transportation.

In case of *Hood & Sons v. D. & H. Co.*,²⁴⁹ the Commission said: "The Commission has no authority to approve or enforce a private agreement made between shippers and carriers concerning charges for transportation, nor is it bound by such agreement when the reasonableness of such charges are challenged in the mode prescribed in the Act. It follows *a fortiori* that the Commission will not undertake to interpret or construe an agreement not to determine its legal effect, not to say that a tariff shall be issued in compliance therewith. The force and effect of such agreements as fixing obligations between the parties thereto are to be determined by the Courts, but under our rules of practice they may be regarded and used as evidence so far as pertinent to questions which the Commission may determine, and it is desirable that the facts be thus agreed upon whenever practicable. When the parties thereto agree upon a rate, said agreement may be regarded as an admission as between the parties executing it of strong evidentiary value that the rate agreed upon is reasonable, and such evidence will be considered by the Commission together with all other facts, circumstances, and conditions that may reasonably apply to the matters under investigation, keeping in view all interests involved, and its duty to establish just and reasonable rates available for all shippers alike without discrimination in favor of any particular shipper by reason of an agreement with the carrier.

"On the other hand the Commission is expressly authorized and empowered to pass upon the reasonableness of a charge for transportation or the reasonableness of any regulation

²⁴⁸ Rule 14, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

²⁴⁹ *Hood & Sons v. D. & H. Co.* (1909), 17 I. C. C. R. 19.

or practice affecting such charge, expressed in a tariff issued by any carrier subject to the provisions of the Act. The rates charged and collected must be in accordance with the tariff legally effective whether in compliance with a private agreement with the shipper or not, and the Commission must, therefore, look to the provisions of the tariff, to ascertain the rate that has been challenged or the reasonableness of any regulations or practices affecting such rates, and to determine and prescribe upon consideration of all the evidence what will be a reasonable charge to be thereafter observed and what regulation or practice is fair to be thereafter followed.

“Where the language of a tariff is ambiguous in its specifications, and when there is a reasonable doubt as to its true import and meaning, the agreement may be examined and employed as a medium of explanation of the tariff to remove the ambiguity.”

§ 106. Performance of Transportation Service without Rates on File with the Interstate Commerce Commission.

In a recent prosecution instituted by the Commission of a carrier for engaging in transportation of interstate commerce without having previously filed with the Interstate Commerce Commission lawful tariffs applicable thereto, and in which conviction was had, a fine of \$12,000 was assessed, the Court, speaking through Humphrey, J., said:²⁵⁰

It thus appears not only that the performance of interstate transportation by a carrier which has neglected to file and publish its rates and charges is a misdemeanor under the Act to Regulate Commerce and under the Elkins Act, punishable by as severe penalties as any other violation of these acts, but it also appears that the requirement for filing and publication of the rates has been in the Act to Regulate Commerce ever since the passage of the original Cullom bill, and that its importance has been recognized by the Congress by successive amendments designed to make it more precise and its violation more surely and more severely punishable.

The railroad line of the defendant here is entirely situated within the State of Illinois. It is not more than 16 miles in length. It is really no more than a switching road connecting the various railways reaching East St. Louis and Alton, Ills., with each other and with various industries which have been established upon its rails. From

²⁵⁰ United States v. Illinois Terminal Ry. Co. 168 Fed. 546.

the indictment and the plea thereto it appears, however, that this defendant is engaged in the transportation of property moving wholly by railroad from one state to another state. It is, therefore, as much subject to the Act as though it owned and operated all the line of railroad connecting the points in different states between which moved the commodities mentioned in the indictment.

The authorities establish that the law regarding publication of rates and charges for interstate transportation applies with equal force to all carriers engaging in such interstate transportation, whether such carriers operate trains from one state to another or operate entirely within the boundaries of a single state.²⁵¹

The chief object of the Act to Regulate Commerce is the prevention of discrimination. Carriers, being engaged in a public employment, must serve all members of the public on equal terms. This was the doctrine of the common law. It has been explicitly stated and strengthened by the successive acts to regulate commerce. The requirement of the act that all rates should be published is perhaps the chief feature of the scheme provided for the effective outlawing of all discriminations. If this portion of the act is not strictly enforced, the entire basis of effective legislative regulation will be lost. Secret rates will inevitably become discriminating rates. Whenever discriminating rates or practices are made public, a thousand forces of self-interest and of public policy will be set at work to reduce them to fairness and equality. The failure of any carrier to properly file and publish its rates is quite as serious a violation of the Act to Regulate Commerce as a failure to observe such rates after they have been properly filed and published.

§ 107. Territorial Divisions of the United States for Rate-Making Purposes.

¶ A. CENTRAL FREIGHT ASSOCIATION TERRITORY.

The Central Freight Association Territory is bounded as follows: On the east by a line drawn from and including Buffalo, N. Y., via the Erie R. R., through Dayton, to Salamanca, N. Y.; thence via Buffalo & Allegheny Division of the Pennsylvania R. R., through Corydon, Warren, Oil City and Franklin, Pa., to Parker, Pa.; thence via Pittsburgh & Western Ry., through Butler to and including Pittsburgh, Pa.; thence via the Baltimore & Ohio R. R., through Washington, Pa., and Wheeling, W. Va., to and including Bellaire, Ohio; thence via the Ohio River R. R., to and including

²⁵¹ C. N. O. & T. P. Ry. v. I. C. C., 162 U. S. 184; 40 L. ed. 935, 16 Sup. Ct. 700; L. & N. R. R. v. Behlmer, 175 U. S. 648; 44 L. ed. 309, 20 Sup. Ct. 209; U. S. v. C. & N. R. R. Co., 157 Fed. Rep. 321; 85 C. C. A. 27; U. S. v. Illinois Terminal Ry. Co. (1909), 168 Fed. Rep. 546.

Kenova, W. Va., thence via the Chesapeake & Ohio R. R., to and including Ashland, Ky., Charleston and Gauley, W. Va., also including all points on said line. On the north by the north route of the Grand Trunk Ry. System from and including Toronto, Ont., to Fort Gratiot, Mich.; thence via the north and west shores of Lakes Huron and Michigan to Chicago, including points located thereon. On the west by a line from Chicago through Joliet and Streator to and including Peoria, Ill.; thence via the Toledo, Peoria & Western Ry. to and including East Burlington, Ill.; thence via the east bank of the Mississippi River to its junction with the Ohio River, including all points on the above described line. On the south by and including points on the north bank of the Ohio River from Cairo, Ill. (including Louisville, Ky.), to and including Coal Grove, O.²⁵²

¶ B. PERCENTAGE BASIS TERRITORY.

The percentage basis territory is practically coterminous with the Central Freight Association Territory and embraces Illinois, Indiana, Ohio and the Peninsula of Michigan. It also includes certain ports on Lake Michigan in the State of Wisconsin, it takes in Louisville and the south shore of the Ohio River in northeastern Kentucky; it includes the northwest corner of the State of Pennsylvania, and extends to a portion of the province of Ontario lying just north of Lake Erie and Lake Ontario.²⁵³

¶ C. JOINT TRAFFIC ASSOCIATION TERRITORY.

The Joint Traffic Association Territory, or as it is often styled the Trunk Line Association Territory, is, generally speaking, that part of the United States east of a line drawn through Buffalo, N. Y., and Pittsburgh, Pa., including Suspension Bridge, Niagara Falls, Tonawanda, Black Rock, Buffalo, East Buffalo, Buffalo Junction, Dunkirk, Salamanca, Erie, Pittsburgh, Bellaire, Wheeling, Parkersburg and

²⁵² *Sondheimer Co. v. Ill. Cent. Rd. Co. et al.* (1909), 17 I. C. C. R. 60.

²⁵³ *Saginaw Board of Trade et al. v. G. T. Ry. Co. et al.* (1909), 17 I. C. C. R. 128.

Charleston, W. Va., and north of the Ohio and Potomac Rivers.²⁵⁴

§ 108. Construction of Rates from Percentage-Basis-Territory Points to Eastern Cities.

The territory referred to as the "percentage basis territory" is practically coterminous with what is known as Central Freight Association Territory and embraces Illinois, Indiana, Ohio and the Peninsula of Michigan. It also includes certain ports on Lake Michigan in the State of Wisconsin; it takes in Louisville, Ky., and the south shore of the Ohio River in northeastern Kentucky; it includes the northwest corner of the State of Pennsylvania, and extends to a portion of the province of Ontario lying just north of Lake Erie and Lake Ontario. Within these boundaries there are about 8,000 railway stations which have been divided or segregated for rate-making purposes, into what are called percentage zones. The rates to and from these groups are made up upon a system, commonly called the percentage zone system, that is not in use elsewhere in the United States.

This extensive rate system was originally established in 1887 by the lines serving the territory that lies east of the Mississippi River and north of the Ohio River.

Under the plan first adopted the system embraced only junction or competitive points. The rate from Chicago to New York was taken as the unit or 100 percent basis, and the rates to Atlantic coast territory were fixed at a percentage of the rate from Chicago to New York, the several junction or competitive points taking rates higher or lower than the Chicago rate as they were less or more distant from New York, by the shortest route "worked or workable," than was Chicago. This made practically a distance tariff. But after several years of actual experience with it that plan was modified and the rates now in effect were worked out on the following basis:

²⁵⁴ *Sondheimer Co. v. Ill. Cent. Rd. Co. et al.* (1909), 17 I. C. C. R. 60.

From an assumed rate of 25 cents from Chicago to New York there was first deducted the sum of 6 cents to represent the fixed terminal expenses at the points of origin and destination. The remaining 19 cents represented the assumed charge for the rail haul exclusive of any service at either terminal. This rate being divided by 920, that being the accepted short-line mileage from Chicago to New York, yielded a rate per mile of 0.0206 cents for a movement from Chicago to New York under the assumed rate; and this rate per mile was used as the factor for establishing an assumed rate from any particular junction or competitive point on the basis of its mileage to New York. That factor or rate per mile multiplied by the number of miles from the particular point to New York gave an assumed rate for the rail haul from that point exclusive of any terminal service at either end of the movement. To that assumed rate the 6 cents was again added to cover the terminal expenses at the points of origin and destination. The result gave an assumed rate from the particular point to New York, including the terminal charges. And the percentage which this assumed rate bore to the assumed rate of 25 cents from Chicago to New York determined the percentage of the Chicago rate which the particular point would take on any given class of merchandise.

That is the general foundation upon which rests the whole structure of eastbound and westbound rates in that percentage basis territory. The system has no official character—that is to say, its bases have not been filed with the Interstate Commerce Commission. It was simply a general understanding intended as a guide to rate makers in establishing the specific rates that are published and filed with the Commission and govern traffic between the Atlantic coast territory and points in the territory, the boundaries of which have been described. In order to avoid the charge that such rates were the result of a concert of action between the carriers serving those territories, it was understood, that the system should be a minimum system of rates and not a maximum system. Theoretically it was also in-

tended to apply only in the construction of rates to and from junction and competitive points. The rates to and from noncompetitive points were made up originally by adding a local or arbitrary rate from such points to some nearby junction or competitive point to which a rate percentage has been assigned.

But in the progress of time the system was subjected to gradual modifications resulting in the extension to adjacent noncompetitive points of the rate to and from the junction or competitive point, this eliminating the addition of the local or arbitrary rates just mentioned. Moreover, while the system was intended to afford a minimum basis only, as a matter of fact the minimum percentages in the course of time became the maximum rates. The extension to adjacent points of the rates to and from nearby junctions and competitive points resulted in the formation of rate zones or groups of arbitrary shape and varying size, in some cases projecting into two States, all points in a particular group taking the same percentage of the Chicago-New York rate on traffic to and from the Atlantic coast territory.

The general nature of the system may be illustrated by reference to one or two representative points. Springfield, in the State of Ohio, for example, is in the 82-percent zone. Xenia, Ohio, is the basing point for that group. Its distance to New York at the time this system was established was 700 miles. If, now, we multiply the factor referred to, namely, 0.0206, by 700, we get 14.42 cents; and if to this we add the 6 cents representing the terminal expenses at both ends of the movement, we get 20.42 cents as an assumed rate from Xenia to New York, which is 81.7 percent of the assumed rate of 25 cents from Chicago to New York; and under the application of a general rule for the disposition of fractions resulting from such computation, a fraction exceeding one-half of 1 percent is considered a full percent. A percentage of 82 percent is thus arrived at as the basis for constructing the rates from that group, and the rates from Springfield, O., are therefore 82 percent of the Chicago-New York rates.

Again, Fort Wayne, in the State of Indiana, is in a 90-per-cent zone. In arriving at that percentage, Muncie was taken as the basing point. The distance from Muncie to Lima via the L. E. & W. R. R. is 85 miles, and the distance from Lima to New York via the Pennsylvania Lines, before they were reconstructed east of Pittsburg, was 713 miles, making a total distance of 798 miles by the shortest route "worked or workable." If the same factor be multiplied by 798 we get an assumed rate from Muncie to New York of 16.44 cents, exclusive of terminal charges. Adding 6 cents to cover these expenses, we arrive at an assumed rate between those points of 22.44 cents, including terminal charges, which is 98.76 percent of the assumed rate of 25 cents from Chicago to New York. The specific rates from Fort Wayne as published by the trunk lines are therefore made up on the basis of 90 percent of the Chicago-New York rate, the 0.76 of 1 percent being taken as a whole percent.

In building up the system efforts were made to avoid, so far as possible, all infractions of the long-and-short-haul clause of the Act. The boundaries of the groups are the lines of railroads, and the point around which each group has been constructed as a basing point is ordinarily the most distant point from New York in the group by the most direct workable route. Water competition and the participation by north and south lines, such as the Monon, in the traffic between the Atlantic coast territory and the percentage-basis territory, as well as other competitive elements, have naturally had some effect in the shaping of the zones. New roads have been built and new routes established since the percentages of the several groups were originally assigned, and this in some instances has resulted in material changes in rates. Newly developed traffic and other conditions have also been considered and from time to time have led to alterations in the percentage of some points. Although the effect of these influences on the form and boundaries of the percentage zones is not without interest, it will not be necessary to dwell here upon those features of the system. While it is not always a simple matter when examin-

ing a map of the percentage group territory to understand and at once comprehend the causes that have produced zones or groups of such irregular outlines, nevertheless a careful study of particular groups, and some knowledge of the transportation conditions that surround and effect them have given the Commission the general impression that their boundaries have been established upon substantial and presumably sound grounds. The fact that no group rates in this country have been subjected to less criticism than the rates to and from these percentage-basis territory and the Atlantic coast is some evidence of the care with which the system has been developed.

Moreover, the enormous commerce that proceeds to and from Central Freight Association territory has not only adjusted itself to this system of rates, but shippers engaged in that commerce have thoroughly understood it for a score and more of years. While traffic and transportation conditions will doubtless change from time to time and thus necessitate alterations in the zone boundaries, such a modification must necessarily be made with deliberation and only upon adequate grounds.²⁵⁵

§ 109. Jurisdiction of Interstate Commerce Commission Over Freight Rates and Charges.

¶ A. DUTY OF COMMISSION IN GENERAL IN RESPECT TO RATES.

The important duties of the Interstate Commerce Commission in respect to railroad rates include the duty of inquiry as to the management of the business, with the right to

²⁵⁵ *Saginaw Board of Trade et al. v. Grand Trunk Railway Co. et al.*, 17 I. C. C. R. 128 (1909). The Commission stated that so far as a cursory examination of its records has disclosed, there have been until this petition was filed, but three other formal proceedings since the organization of the Commission in 1887, in which complaint was made of the percentage assigned to a particular group. *Detroit Board of Trade v. Grand Trunk Ry. of Canada* (1888), 1 I. C. R. 698; 2 I. C. R. 199, 2 I. C. C. R. 315; *Pratt Lumber Co. v. C. I. & L. Ry. Co.*, 10 I. C. C. R. 29; *Green Bay Business Men's Association v. L. S. & M. S. Ry. Co.* (1909), 15 I. C. C. R. 59.

compel complete and full information concerning it, and the duty of seeing that there is no violation of the long-and-short-haul clause of the Act, or any prohibited discrimination, rebates, or other device to give undue preference, and also that the publicity required by Section 6 of the Act is observed.²⁵⁶

¶ B. COMMISSION MAY DETERMINE AND PRESCRIBE JUST AND REASONABLE RATES TO BE OBSERVED AS MAXIMA CHARGES FOR TRANSPORTATION OF FREIGHT.

The Act to Regulate Commerce (*as amended June 18, 1910*), authorizes and empowers the Commission, whenever, after full hearing on a complaint made as provided in section 13 of the Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), it shall be of the opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of the Act for the transportation of property as defined in the first section of the Act, or that any individual or joint regulations or practices whatsoever of such carrier or carriers subject to the provisions of the Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of the Act, to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged.²⁵⁷

The Commission is authorized to condemn an existing rate and order a reduction of that rate, or prescribe a reasonable maximum rate to be charged in the future only when, upon consideration of all the facts, circumstances and conditions

²⁵⁶ I. C. C. v. C. N. O. & T. P. Ry. Co. et al. (1897), 167 U. S. 479; 42 L. ed. 243; 17 Sup. Ct. Rep. 896.

²⁵⁷ Act to Regulate Commerce. Section 15 (*as amended June 18, 1910*).

appearing, it is of the opinion that the rate complained of is unreasonable, or unjustly discriminatory, or unduly preferential.²⁵⁸

This should not be understood as giving the Commission power to prescribe maximum rates which are absolute for the future, because that is not true, as will be seen further along. Such rates are only binding on the carrier for a period of two years, as will be noted in *Paragraph G, infra*.

¶ C. COMMISSION MAY UPON ITS OWN INITIATIVE ENTER UPON HEARING CONCERNING PROPRIETY OF NEW RATE.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that whenever there shall be filed with the Commission any schedule stating a new individual or joint rate or charge, or any new individual or joint regulation or practice affecting any rate or charge, the Commission shall have, and it is given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleadings by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, charge, regulation, or practice.²⁵⁹

¶ D. COMMISSION MAY DETERMINE AND PRESCRIBE JUST AND REASONABLE REGULATIONS OR PRACTICES.

The Commission may determine and prescribe what regulation or practice in respect to property transported is just, fair and reasonable to be thereafter followed.^{259a}

It may, therefore, after investigation, find a particular rate to be unlawful, and prohibit the exaction of that rate.²⁶⁰

The Commission has authority whenever the unreasonableness of the rate is in issue.²⁶¹

²⁵⁸ *Marshall Oil Co. v. C. & N. W. Ry. Co. et al.* (1908), 14 I. C. C. R. 210; *Dallas Frt. Bureau v. M. K. & T. Ry. Co. et al.* (1907), 12 I. C. C. R. 427.

²⁵⁹ Act to Regulate Commerce, Section 15 (as amended June 18, 1910).

^{259a} *Ibid.*

²⁶⁰ *Pa. Millers' State Association v. P. & R. Ry. Co. et al.* (1900), 8 I. C. C. R. 531.

²⁶¹ *Porter v. St. L. & S. F. Rd. Co. et al.*, 15 I. C. C. R. 1 (1909).

Upon the most restricted interpretation of the fifteenth section of the statute the Commission has jurisdiction of any rule or regulation affecting the rate of transportation.²⁶²

¶ E. PRIMARY JURISDICTION OF COMMISSION TO DETERMINE
REASONABLENESS OR UNREASONABLENESS OF RATES.

A shipper can not maintain an action against a common carrier to obtain relief from an alleged unreasonable freight rate exacted from him for an interstate shipment, without reference to any previous action by the Interstate Commerce Commission where such rate has been filed with that Commission and promulgated as provided by the Act to Regulate Commerce, and is the rate which it is the duty of the carrier, under that Act, to enforce against shippers until changed in accordance with the provisions of that statute, since the independent right of an individual originally to maintain actions to obtain pecuniary redress for violations of the Act, conferred by section 9, must be confined to such wrongs as can consistently with the context of the Act, be redressed without previous action by the Commission; and the provisions of section 22, that nothing therein shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies," can not be construed as continuing in shippers a common-law right the continued existence of which would be absolutely inconsistent with the provisions of the statute.^{262a}

A Circuit Court of the United States is without jurisdiction to enjoin the filing, publication, or enforcement by a railroad company of an interstate rate, on the ground that it is unreasonable or discriminatory, in advance of action thereon by the Interstate Commerce Commission, which is vested by the Act to Regulate Commerce with exclusive jurisdiction to determine such questions in the first instance.^{262b}

²⁶² See note 259, *supra*.

^{262a} *T. & P. Ry. Co. v. Abilene Cotton Oil Co.* (1907), 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, reversing 38 Texas Civ. App., 366, 85 S. W. 1052.

^{262b} *Columbus I. & S. Co. v. K. & M. Ry. Co.* (1910), 178 Fed. Rep. 261.

¶ F. COMMISSION MAY ORDER CARRIERS TO CEASE AND DESIST FROM FULL EXTENT OF VIOLATIONS FOUND.

The statute empowers the Commission to make an order that the carrier or carriers shall cease and desist from the violation, as stated in *Paragraph A, supra.* to the extent to which the Commission finds the same to exist, and to not thereafter publish, demand or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and to conform to and observe the regulation or practice so prescribed.²⁶³

¶ G. ORDER OF COMMISSION SHALL CONTINUE IN FORCE NOT EXCEEDING TWO YEARS UNLESS SUSPENDED OR SET ASIDE BY COMMISSION OR COURT.

The statute provides that all orders of the Commission relating to rates or charges shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a Court of competent jurisdiction.²⁶⁴

This empowers the Commission to prescribe rates for a future period of not exceeding two years.²⁶⁵

¶ H. COMMISSION MAY ESTABLISH THROUGH ROUTES AND JOINT RATES APPLICABLE THERETO.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that the Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall

²⁶³ Act, Section 15, (as amended June 18, 1910).

²⁶⁴ Act to Regulate Commerce, Section 15 (as amended June 18, 1910).

²⁶⁵ *Pacific Coast Lumber Mfrs.' Association et al. v. Northern Pacific Ry. Co. et al.* (1909), 16 I. C. C. R. 465.

be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line.²⁶⁶

¶ I. COMMISSION MAY NOT ESTABLISH THROUGH RATES IN CONNECTION WITH STREET ELECTRIC PASSENGER RAILWAYS.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that the Commission shall not establish any through rate between street electrical passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character.²⁶⁷

¶ J. COMMISSION NO AUTHORITY TO ESTABLISH RATES WITH INDEPENDENT WATER CARRIERS.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that the Commission shall not have the right to establish any rate or charge when the transportation is wholly by water, and that any transportation by water affected by that Act shall be subject to the laws and regulations applicable to transportation by water.²⁶⁸

¶ K. COMMISSION NO POWER TO PRESCRIBE RATES FOR THE FUTURE.

An inquiry whether rates of carriers are reasonable or not is a judicial act; but to prescribe rates for the future is a legislative act.²⁶⁹ Incorporating into the Interstate Commerce Act the common-law obligation resting upon the carrier to make all its charges reasonable and just, and directing the Commission to execute and enforce the provisions of the Act, do not, by implication, carry to the Commission or

²⁶⁶ Act to Regulate Commerce, Section 15 (*as amended June 18, 1910*).

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ *I. C. C. v. C. N. O. & T. Ry. Co. et al.* (1897), 167 U. S. 479; 42 L. ed. 243, 17 Sup. Ct. Rep. 896.

invest it with power to exercise the legislative function of prescribing rates which shall control in the future. Section 6 of such statute expressly recognizes the right of the carrier to establish, increase or reduce rates on condition of publishing and filing them with the Commission.²⁷⁰

The Interstate Commerce Commission has no power to prescribe a tariff of rates which shall control in the future, and therefore cannot invoke a judgment in mandamus from the Courts to enforce any such tariff by it prescribed.²⁷¹

Congress has not conferred upon the Interstate Commerce Commission the legislative power of prescribing rates, either maximum or minimum or absolute, nor has it authorized the Commission to obtain from the courts a peremptory order that, in the future, the railroad companies should follow the rates which it has determined to have been in the past reasonable and just.²⁷²

¶ L. POWER OF COMMISSION TO RELIEVE FROM OPERATION OF
LONG-AND-SHORT-HAUL CLAUSE.

See *Section 113, post.*

¶ M. COMMISSION NO AUTHORITY TO ESTABLISH GENERAL RATE
SCHEDULES.

The Commission has no authority to establish general rate schedules, but must deal with the interstate rates of this country, which have not been established upon any consistent theory, as it finds them. What the Commission takes off in one place it cannot add in some other. Unless, therefore, the general result of all rates is to yield an undue revenue to the carrier, the Commission should not reduce a particular rate simply because it might think, if establishing that rate *de novo* as part of a general scheme, that it ought to be somewhat lower or somewhat higher in proportion to

²⁷⁰ I. C. C. v. C. N. O. & T. Ry. Co. et al. (1897), 167 U. S. 479; 42 L. ed. 243, 17 Sup. Ct. Rep. 896.

²⁷¹ Ibid.

²⁷² I. C. C. v. Alabama Midland Ry. Co. et al. (1897), 168 U. S. 144; 42 L. ed. 414; 18 Sup. Ct. Rep. 45. See below, 74 Fed. Rep. 715; 5 I. C. R. 685.

the others. The rate attacked must be so out of proportion as to be unreasonable or must so discriminate as to be undue or must be unlawful for some other special reason.²⁷³

¶ N. COMMISSION MAY MAKE AN ORDER PRESCRIBING SAME RATE FOR SIMILAR SERVICE TO OTHER SHIPPERS.

It is one of the primary purposes of the Interstate Commerce Law to remove discriminations in rates; and under the broad power conferred on the Interstate Commerce Commission "to execute and enforce the provisions of this Act" and "to make an order that the carrier shall cease and desist from such violation to the extent to which the Commission find the same to exist," where it has found that discrimination exists against a shipper or commodity, it may prescribe a reasonable rate, and that the charge shall be the same as that for a similar service to other shippers or on another similar commodity, instead of fixing an absolute maximum rate, which would enable the carrier to continue the discrimination by reducing the rate to the shippers or on the other commodity.²⁷⁴

¶ O. POWER OF COMMISSION TO ESTABLISH JOINT THROUGH RATES AND DIVISIONS THEREOF.

The statute provides that the Commission may after hearing on a complaint establish through routes and *joint rates* as the maximum to be charged and prescribe the division of such rates when that may be necessary to give effect to the provisions of the Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates, provided no reasonable or satisfactory through route exists.²⁷⁵ This provision also applies when one of the connecting carriers is a water line.

The law does not require the Commission in all cases

²⁷³ Corn Belt Meat Producers' Association v. C. B. & Q. Ry. Co. et al. (1908), 14 I. C. C. R. 376.

²⁷⁴ N. Y. C & H. R. R. Co. v. I. C. C. (1909), 168 Fed. Rep. 131.

²⁷⁵ Act to Regulate Commerce. Section 15.

where no through routes and joint rates exist to establish them, but only empowers it to do so in proper cases with the manifest intent of giving effect to the general purposes of the Act to Regulate Commerce by securing reasonable facilities to the public and preventing unreasonable and unjust rates, practices and discriminations, and in the exercise of this authority the Commission is bound by the same considerations of justice and fairness as it is in the exercise of the rate-making power in other respects. Where neither the interest of the public, nor the ends of justice as between parties directly interested, will be promoted by the establishment of through routes and joint rates and divisions thereof, a proper case for the exercise of the authority invoked has not been shown.²⁷⁶

¶ P. JURISDICTION OF COMMISSION OVER JOINT THROUGH RATES FROM POINT IN UNITED STATES TO POINT IN ADJACENT FOREIGN COUNTRY.

In *Black Horse Tobacco Co. v. I. C. R. R. Co.*,²⁷⁷ the Commission stated: "The Act to Regulate Commerce confers jurisdiction over common carriers engaged in transportation of persons or property from any place in the United States to an adjacent foreign country. That Act further provides that 'All charges made for any service rendered or to be rendered, in the transportation of passengers or property, as aforesaid,' shall be just and reasonable. These American carriers are therefore under requirement to impose reasonable charges for the transportation before us.

If the American line saw fit, it might doubtless name a rate to the Mexican border, and in that event we could deal only with the service up to the Mexican line. Instead of adopting that course the American carriers, in connection with the Mexican carrier, established a joint charge for the entire service from the point in the United States to the point

²⁷⁶ *Loup Creek Colliery Co. v. Virginian Ry. Co.* (1907), 12 I. C. C. R. 471.

²⁷⁷ *Black Horse Tobacco Co. v. I. C. R. R. Co. et al.* (1910), 17 I. C. C. R. 588.

in Mexico, and gave no information as to the part of that charge which would accrue to the American roads. This does not relieve the American carriers from obligation to impose a reasonable charge for their service; it does make it impossible for the Commission to determine the reasonableness of that charge, except by examining the entire through rate.

Clearly, we have no authority to establish a rate of transportation in Mexico; nor to order the maintenance of a rate for the future from a point in the United States to a point in Mexico; but we may require the American carriers to cease and desist from continuing to apply a joint through rate or any rule, regulation, or practice in connection with that joint through rate, and we may, where such rate has been voluntarily maintained, inquire whether it has been reasonable, and if found unreasonable, award damages in that behalf."

¶ Q. POWER OF COMMISSION TO RESTRAIN ENFORCEMENT OF NEW RATE OR CHARGE OR REGULATION OR PRACTICE AFFECTING SAME PENDING INVESTIGATION.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*), reads as follows: "Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, * * * or charge, * * *, or any new individual or joint regulation or practice affecting any rate, * * *, or charge, the Commission shall have, and it is hereby given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, * * * charge, * * * regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby, a statement in writing of its reasons for such suspension may sus-

pend the operation of such schedule and defer the use of such rate, * * * charge, * * * regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, * * * charge, * * * regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, * * * charge, * * * regulation, or practice goes into effect, the Commission may make such order in reference to such rate, * * * charge, * * * regulation, or practice as would be proper in a proceeding initiated after the rate, * * * charge, * * * regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period of not exceeding six months."

§ 110. Duty of Carriers to quote Rates to Shippers.

Section 6 of the Act to Regulate Commerce (*as amended June 18, 1910*), reads as follows:

"If any common carrier subject to the provisions of this Act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of

two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

“It shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: ‘The Station Agent of the —— Company at —— Station,’ together with the name of the proper post-office, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office.”

It will be noted that the law does not provide for any redress to the shipper who may have suffered loss on account of an erroneous quotation of the tariff rate, for the reason that it has so far seemed impracticable to find any method of so doing without opening a loophole for the allowance of secret rebates in such manner as would be practically unprovable in criminal proceedings.

CHAPTER VIII.

LONG-AND-SHORT-HAUL CLAUSE AND RELIEF FROM OPERATION THEREOF.

SECTION

- 111. Long-and-Short-Haul Provision of the Statute.
- 112. Purpose of the Long-and-Short-Haul Clause.
- 113. Authority of Interstate Commerce Commission to relieve Carriers from Operation of Long-and-Short-Haul Clause.
- 114. Demurrage Charges must not be included in the Higher Charge.
- 115. Rate must be Considered as an Entirety.
- 116. Meaning of Word "Line."
- 117. Where Rates are reduced to meet Water Competition which is Subsequently eliminated.
- 118. Long-and-Short-Haul Provisions of State Statute not Applicable to Interstate Traffic.
- 119. No Rates required to be changed except after Expiration of Six Months from Passage of Statute.

§ 111. Long-and-Short-Haul Provision of the Statute.

The Fourth Section of the Act to Regulate Commerce (*as amended June 18, 1910*), provides that, it shall be unlawful for any common carrier subject to the provisions of the Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of the Act.

The statute further provides that this shall not be construed as authorizing any common carrier within the terms of the Act to charge or receive as great compensation for a shorter as for a longer distance.

The old law provided that the carrier should not charge

greater compensation "*under substantially similar circumstances and conditions*" for a shorter than for a longer distance over the same line in the same direction, but authorized the Commission in special cases to relieve the carrier from the operation of that provision. The courts had so construed the meaning of the words "*under substantially similar circumstances and conditions*" as to practically deprive section 4 of the old law of real vitality. It will be noted that the words "*under substantially similar circumstances and conditions*" are omitted in the new law.

§ 112. Purpose of the Long-and-Short-Haul Clause.

The exaction, without lawful excuse, of a greater compensation in the aggregate for the shorter than for the longer haul over the same line in the same direction, the shorter being included in the longer, which is forbidden by section 4 of the Act to Regulate Commerce, is only a form of unjust discrimination or undue preference, to which, it seems, Congress desired to call particular attention.¹

The long-and-short-haul principle is nothing more than an extension to places of the rule forbidding unjust discrimination between persons. It is as necessary to the *prevention* of illegal preference between localities as the second section is to the *prevention* of wrongful favoritism as between persons. The fourth section, or long-and-short haul provisions, and the second, or unjust discrimination clause, stand in the statute as definite and specific rules, on either side of the general and indefinite provision against undue preference contained in the third section. They are, on account of directly applying to particular transportation service, essential to successful regulation, for their presence in the statute *prevents* a large number of abuses which would *exist with impunity* until separately condemned in actions brought under the third section or the first section of the statute. This is nothing more than an expression

¹ McClelen et al. v. Southern Ry. Co. et al. (1896), 6 I. C. R. 588.

of the old but always applicable maxim that "an ounce of prevention is worth a pound of cure."

The provision is certainly one of obvious justice and propriety.

§ 113. Authority of Interstate Commerce Commission to relieve Carriers from Operation of Long-and-Short-Haul Clause.

The Act (*as amended June 18, 1910*), provides that upon application to the Interstate Commerce Commission, a common carrier may, in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property.

The Commission is further authorized to prescribe from time to time the extent to which such designated common carrier may be relieved from the operation of the law.²

§ 114. Demurrage Charges must not be included in the Higher Charge.

The prohibition against making for the shorter than for the longer haul, is based on *distance* and relates to the actual transportation charges and not to demurrage charges which are in the nature of penalties for storage in the cars of the carrier.³

If, however, such demurrage charges when added to the transportation rates result in greater aggregate charges in certain cases than in other cases involving longer hauls this may constitute an undue preference as between localities under section 3 of the Act.⁴

§ 115. Rate must be Considered as an Entirety.

The question of a greater charge in the aggregate for

² Act to Regulate Commerce, Section 4.

³ *Pennsylvania Millers' State Assn. v. P. & R. Ry. Co. et al.* (1900), 8 I. C. C. R. 531.

⁴ *Ibid.*

a shorter than for a longer distance over the same line in the same direction is not to be determined by the portions allotted to the different roads on the line, but by the rate as an entirety.⁵

§ 116. Meaning of Word "Line."

The word "line" as used in the statute means a physical line, not a mere business arrangement between carriers.⁶

§ 117. Where Rates are reduced to meet Water Competition which is Subsequently eliminated.

Section 4 of the Act to Regulate Commerce (*as amended June 18, 1910*), provides that whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

§ 118. Long-and-Short Haul Provisions of State Statute not Applicable to Interstate Traffic.

An unconstitutional regulation of interstate commerce is made by a State constitution (*in this case Kentucky*), prohibiting common carriers from charging more for a shorter than for a longer haul so far as its provisions extend to a long haul from a place outside of to one within the State, and the shorter haul between points on the same line in the same direction, both of which are within the State, as the carrier is thus compelled to adjust, regulate or fix his

⁵ Imperial Coal Co. et al. v. P. & L. E. Rd. Co. et al. (1889), 2 I. C. R. 436.

⁶ Daniels v. C. R. I. & P. Ry. Co. et al. (1895), 6 I. C. C. R. 458; Vermont State Grange v. B. & L. Rd. Co. et al. (1887), 1 I. C. C. R. 158; 1 I. C. R. 500.

interstate rates with some reference to his rates within the State.⁷

A State statute which in its direct result regulates the interstate transportation of a single individual carrier violates the commerce clause of the United States Constitution.⁸

§ 119. No Rates required to be changed except after Expiration of Six Months from Passage of Statute.

Section 4 of the Act to Regulate Commerce (*as amended June 18, 1910*), provides that no rates or charges lawfully existing at the time of the passage of the amendatory Act of that date shall be required to be changed by reason of the provisions of that section prior to the expiration of six months after the passage of the amendatory Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of that section, until a determination of such application by the Commission.

The above provision was inserted in order that the new law might not unduly disturb existing conditions in an abrupt manner.

⁷ L. & N. Rd. Co. v. Eubank (1901), 184 U. S. 27; 46 L. Ed. 416; 22 Sup. Ct. 277.

⁸ Ibid.

CHAPTER IX.

BILLS OF LADING AND CONTRACTS OF SHIPMENT.

SECTION

120. Carriers receiving Property for Interstate Transportation required by Law to issue a Bill of Lading Therefor.
121. Part of Bill of Lading relating to Freight Rate.
122. Allowance of Rebate does not vitiate Bill of Lading.
123. Regulations and Practices affecting Bills of Lading.
124. Bills of Lading over Rail-and-Water Routes containing Provisions affecting Marine Insurance.
125. Interstate Commerce Commission no Power to prescribe Form of Bill of Lading.
126. Uniform Bills of Lading.
127. Bills of Lading covering Export and Import Traffic.
128. "Through" Bills of Lading.
129. Manner of contracting for Transportation.
130. Contract between Carrier and Shipper for different Freight Rate than that published in Tariff Invalid.

§ 120. Carriers receiving Property for Interstate Transportation required by Law to issue a Bill of Lading Therefor.

The Act to Regulate Commerce (as amended June 29, 1906) provides "That any common carrier, railroad, or transportation company receiving property from a point in one State to a point in another State, shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed."¹

¹ Act, Section 20.

The above provision in the Hepburn Act of June 29, 1906, is what is commonly called the Carmack amendment. As to the constitutionality of that provision relating to the initial carrier's liability for any loss, damage, or injury to shipments, see under appropriate chapter.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*), after granting shippers the privilege to route their shipments makes it the duty of the initial carrier to issue through bills of lading therefor.

§ 121. Part of Bill of Lading relating to Freight Rate.

The material part of a bill of lading on the subject of the freight rate is that which fixes the rate per 100 pounds. Weighing the freight is purely a mechanical process and may be done at the point of shipment, or at the point of destination.²

§ 122. Allowance of Rebate does not vitiate Bill of Lading.

There is nothing in the Interstate Commerce Act which vitiates bills of lading, or which, by reason of an allowance of rebates, if actually made, would invalidate a contract of affreightment, or exempt a railroad company from liability on its bills of lading. The law makes such agreements void as to the rebate, etc., but does not make the contract of affreightment otherwise void.³

§ 123. Regulations and Practices affecting Bills of Lading.

It is a mischievous practice for carriers to publish on their bills of lading, rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a Court of Law.⁴

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*), makes it the duty of all common carriers

² Baird v. St. L. I. M. & S. R. Co. (1890), 18 Fed. Rep. 592; 4 I. C. R. 422.

³ Merchants' Cotton Press Co. v. N. A. Insurance Co., 151 U. S. 368; 14 Sup. Ct. Rep. 367; 38 L. ed. 195.

⁴ In the Matter of Released Rates, 13 I. C. C. R. 550.

subject to its provisions to establish, observe and enforce just and reasonable regulations and practices affecting the issuance, form, and substance of tickets, receipts, and bills of lading.

§ 124. Bills of Lading over Rail-and-Water Routes containing Provisions affecting Marine Insurance.

Unless a railway forming a part of a lake-and-rail route see fit to hold itself responsible for losses arising from perils of the sea, it should tender to the public a transportation contract which leaves shippers free to arrange for their own marine insurance.⁵ The bill of lading should plainly state the liability assumed by the carrier. Any other course of business will inevitably result in giving the shipper in many cases a defective contract.⁶

As regards the marine risk of carriers, the Commission ruled that carriers are required to tender to shippers a bill of lading which is consonant with the provisions of their tariff in this respect.⁷

§ 125. Interstate Commerce Commission no Power to prescribe Form of Bill of Lading.

The Interstate Commerce Commission has no power to adopt a particular form of bill of lading to be used by carriers in interstate commerce.⁸

§ 126. Uniform Bills of Lading.

“The proceeding relating to the uniform bills of lading was originally instituted before the Interstate Commerce Commission in November, 1904, upon petition of the Illinois Manufacturers’ Association and other trade and commercial organizations in the Official Classification territory, complaining of the proposed enforcement by the carriers in that terri-

⁵ Wyman, Partridge & Co. v. B. & M. R. R. Co., 13 I. C. C. R. 258.

⁶ Ibid.

⁷ Wyman, Partridge & Co. v. B. & M. R. R. Co., 15 I. C. C. R. 577.

⁸ Re Bills of Lading, 14 I. C. C. R. 346; also Twenty-Second Annual Report of I. C. C. (1908).

tory of certain changes in the so-called uniform bill of lading then generally used. After hearing, the Commission suggested the appointment by carriers and shippers represented of a joint committee to devise a suitable form of bill of lading and report the same to the Commission. Such a joint committee was appointed and after numerous conferences at which matters in question were given careful consideration, reported to the Commission on June 14, 1907, the proposed uniform bill of lading. The proceeding was then enlarged to bring in all carriers in the country and afford an opportunity for hearing to all interested shippers. At such hearing a number of comparatively unimportant provisions of the bill were the subject of controversy, but the difference upon such points were substantially eliminated by informal conferences and extensive correspondence, and accordingly on June 27, 1908, the Commission issued a report recommending the adoption of the bill of lading which had been agreed to by the conflicting interests represented before the Commission.

“The Commission did not undertake to prescribe and order the adoption of the bill of lading recommended, because it was convinced that such an order would be beyond its authority. The bill was adopted by all lines in the Official Classification Territory on November 1, 1908, and leading lines in other parts of the country speedily put the bill into use.”⁹

The uniform bills of lading as adopted consist of two forms or kinds; one to be used for “order consignments,” and the other for “straight consignments,” as those terms are understood in commercial dealings. They differ only on the face side, the conditions printed on the back being the same in both cases. These differences will appear upon inspection of the reproductions of the bills given below. The main point in this connection is that the “order” bill possesses a certain degree of negotiability while the “straight” bill is non-negotiable and is so stamped upon its face.

⁹ Re Bills of Lading, 14 I. C. C. 346.

Moreover, and this is a matter of consequence, the "order" bill of lading by conditions specified therein is required to be surrendered and properly indorsed upon or before delivery of the property to the consignee. The bill of lading in accordance with its terms is required to be signed by the shipper and agent of the carrier issuing the same; space being provided for that purpose.

The prescribed size of the bill of lading is eight and one-half inches wide by eleven inches long.

The two forms are distinguished by different colors; "Order" bills of lading are printed on yellow paper for convenient distinction from bills of lading covering "straight" consignments, which are printed on white paper.

Bills of lading other than those covering "order" consignments are stamped "Not Negotiable."

The detail arrangement respecting other matters that customarily appear on the face of bills of lading, such as the name of destination, car numbers and initials, routing, description of articles, weights, etc., was left to be prescribed by the uniform bill of lading committee.

Order Bill of Lading—Original.

"Received, subject to classifications and tariffs in effect on the date of issue of this original bill of lading, at 190.. from the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which

are agreed to by the shipper and accepted for himself and his assigns.

“The surrender of this original bill of lading, properly indorsed, shall be required, before the delivery of the property. Inspection of property covered by this bill of lading will not be permitted unless provided by law or unless permission is indorsed on this original bill of lading or given in writing by the shipper.”

NOTE.—In connection with the name of the party to whom the shipment is consigned the word “Order of” shall prominently appear in print, thus:

“Consigned to order of

Bill of Lading—Original—Not Negotiable.

“Received, subject to classifications and tariffs in effect on the date of issue of this original bill of lading at 190.. from the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back thereof) and which are agreed to by the shipper and accepted for himself and his assigns.”

NOTE.—Bills of lading other than those covering “order” consignments shall be stamped “not negotiable.”

Conditions.

The following conditions appear on the back of the bill of lading:
“Section 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

"No carrier or party in possession of any of the property herein described shall be liable for any loss thereof, damage thereto or delay caused by act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in weights of grain, seed, or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damage, or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon request of the shipper, owner, or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

"Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law, acts only as agent with respect to the portion of the route beyond its own line.

"No carrier shall be liable for loss, damage, or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability imposed.

"Sec. 3. No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

"The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid), at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

"Claims for loss, damage, or delay, must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or, in case of failure to make delivery then within four months after a reasonable time for delivery has elapsed. Unless claims are so made, the carrier shall not be liable.

"Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

"Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder, shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

"Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been sent or given may be kept in car, depot, or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

"The carrier may make a reasonable charge for detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

"Property destined to or taken from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

"Sec. 6. No carrier will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

"Sec. 7. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

"Sec. 8. The owner or consignee shall pay the freight and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

"Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route such water carriage

shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in the bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea, or other water; or from explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, machinery or appurtenances; or from collision, stranding; or other accident of navigation, or from prolongation of voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed, and assist vessels in distress, and to deviate for the purpose of saving life or property.

"Sec. 10. Any alterations, additions or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor."

The above uniform bills of lading were designated for use in connection with the movement of miscellaneous freight and general merchandise, and as a substitute for the bills which were in use before the adoption of the new bills. They are not intended to take the place of special bills of lading which are issued on particular commodities of such a nature or so handled as to require exceptional provisions, such as livestock, for example, and perhaps perishable property. In short, the bills were proposed as uniform or standard bills, so to speak, to be used in connection with freight articles generally, except such as were or ought to be carried under special conditions.¹⁰

§ 127. Bills of Lading covering Export and Import Traffic.

Export and import traffic may be forwarded under through bills of lading but such through billing must clearly separate the liability of the inland carrier or carriers and of the ocean carrier, and must show the tariff rate of the inland carrier or carriers.¹¹

Carriers handling export and import traffic under through bills of lading strictly observe this ruling of the Commission and such bills of lading contain two separate sets of conditions; one covering the inland carrier or carriers' liabilities, and the other the marine risk.

¹⁰ Re Bills of Lading, 14 I. C. C. 346.

¹¹ Rule 86 Tariff Circular 15-A; Rule 46 Tariff Circular 16-A.

§ 128. "Through" Bills of Lading.

The Act to Regulate Commerce provides that any common carrier, railroad or transportation company receiving property from a point in one State to a point in another State shall issue a receipt or bill of lading therefor.¹²

"Through" bills of lading on some commodities, especially cotton, are an important facility in their transportation as now conducted. Drafts drawn with such bills of lading attached are a basis of credit.¹³ In fact, at the present time in a great many lines of business such as grain, produce, lumber, etc., these commodities are shipped on what are known as "To Order" bills of lading; the bill of lading being attached to the draft and handled through the banks. This method of transacting business has become a very potent factor in the commercial world.

It is a well settled rule of commercial law that the transfer and delivery of a bill of lading is a symbolic transfer and delivery of the property for which it is a receipt. And thus by means of the bill of lading the property can be, and often is, either sold, or, as is more commonly the case, pledged as security for money advanced upon the faith of it. The transferee of the bill of lading will, under these circumstances, be entitled to delivery of the property from the carrier, especially if the bill has been drawn for delivery to the order of the consignee and by him indorsed or transferred over to another.

On the other hand the carrier, being bound to make delivery to the rightful holder of the bill of lading as above stated, cannot usually be compelled to deliver the property except on production of that instrument.

These qualities and features of bills of lading, and the use made of them in commercial transactions as security for advancements of money on discounts of drafts and notes, assimilate them somewhat to that class of commercial paper generally known as negotiable instruments.

¹² Act, Section 20.

¹³ *Harwell et al. v. C. & W. Rd. Co.* (1887), 1 I. C. R. 631.

They are not, however, negotiable in the legal signification of that word, implying the right of any bona fide holder, for value, to the property referred to in them.

§ 129. Manner of contracting for Transportation.

Railway companies may contract with shippers for a single transportation or for successive transportations, subject to a change of rates in the manner provided for in the Interstate Commerce Act.¹⁴

§ 130. Contract between Carrier and Shipper for different Freight Rate than that published in Tariff Invalid.

See Section 242, post.

¹⁴ *I. C. C. v. C. G. W. Ry. Co. et al.* (1907), 209 U. S. 108; 52 L. ed. 705, 28 Sup. Ct. 493, affirming 141 Fed. Rep. 1003.

CHAPTER X.

WEIGHTS AND WEIGHING.

SECTION

131. Rules prescribing Minima and Maxima Weights and Regulations affecting Same must be stated in Carriers' Schedules.
132. Right of Carriers to establish Minima Weights.
133. Duty of Carriers to furnish Cars Capable of carrying Minima Weights prescribed.
134. Duty of Carrier to establish Minima Weights Consistent with the Loading Capacity of the Cars.
135. Unreasonable in General for Carriers to make Minimum Weight Vary with the Size of the Car Furnished.
136. Right of Carriers to fix as Minimum Weight the Marked Capacity of the Car, where the Nature of the Traffic will Permit and the Attendant Circumstances justify it.
137. Unreasonableness of Regulation fixing Different Minima Weights for Cars with and without Refrigeration Service.
138. Unreasonableness of a Rule or Regulation fixing a Higher Minimum Loading Requirement than the Practice of the Carriers governed by the Master Car Builders' Association Rules will permit.
139. Weight to apply on Carload Shipment in Absence of published Carload Minimum Weight.
140. Minima Weights for Less-than-Carload Shipments.
141. Weights at Points of Origin and Destination considered.
142. Right of Initial Carrier to furnish any Available Equipment, in the Absence of a definite Agreement with the Shipper, under a Local Any-Quantity Rate regardless of Tariffs of Connecting Lines.
143. Carriers charging for Weight not carried.
144. Assessing Freight Charges on purported Weights instead of the actual Weights of Shipments.
145. Allowance for Weight of Stakes, Racks and Blocks on Flat and Gondola Cars.
146. Actual Scale Weights Conclusive and not Weights marked on the Bill of Lading.
147. Right of Shipper to rely upon Bill-of-Lading Weight when such Weight is ascertained at Point of Origin.
148. Billing Shipments at Net Weights.
149. Reweighing Shipments.

SECTION

150. Not Unlawful to charge an Increased Rate as a Penalty for Loading Cars beyond a Specified Weight above the Marked Capacity of the Car.
151. Light Loading of New Cars on First Trip.
152. Estimated Weights on Standard Packages.
153. Rules to govern where Different Capacity Cars are furnished by the Carrier than ordered by the Shipper.
154. Penalty for False Weighing, False Reporting and False Billing of Weights of Shipments by Carrier or its Agent.
155. Penalty for False Weighing by Shipper or its Agent.
156. Overcharge account of Excess Weight.
157. Carload Minima applying in Connection with Refrigeration Service.

§ 131. Rules prescribing Minima and Maxima Weights and Regulations affecting Same must be stated in Carriers' Schedules.

See *Section 461, Paragraph K, post.*

§ 132. Right of Carriers to establish Minima Weights.

Where a rate for carload shipments is relatively lower than the less-than-carload rate the reasonableness of a minimum carload weight to which the carload rate will apply is recognized as is also the desirable highest efficiency both in the movement and the loading of the cars.¹

The more approved method is to charge a given rate per 100 pounds for any excess, rather than allow the shipper to load as much as he chooses in a car at a stated rate.² A carrier has the right to establish a minimum on carload shipments as high as will permit the commodity to be safely carried without injury. There is no duty upon the carrier to establish this minimum at such an amount as the consignee or purchaser decides is advantageous to him. In other words, the minimum should be established with relation to the capacity of the car and not to the needs or desires of the purchaser of the product.³

¹ Administrative Ruling 77, Tariff Circular 15-A.

² *Leonard v. C. & A. Ry. Co.*, 2 I. C. R. 599, 3 I. C. C. R. 241.

³ *Ozark Fruit Growers' Association v. St. L. & S. F. R. Co. et al.*, 16 I. C. C. R. 134.

A carload minimum for light and bulky articles like furniture should be such that the minimum can ordinarily be loaded, but the minimum is not necessarily unreasonable because it occasionally happens that cars, although loaded to their full physical capacity, will not contain it.⁴

§ 133. Duty of Carriers to furnish Cars Capable of carrying Minima Weights prescribed.

A carrier in defining a carload and fixing the rate, should furnish a car adapted to carry properly the quantity designated.⁵

Where three connecting roads publish a joint tariff under which they hold themselves out to the public as prepared to transport commodities in carload lots of a certain minimum magnitude at a certain specified rate, such carriers are by their tariffs allowed to charge no more than the rate upon such carload, no matter what equipment they may provide for its transportation, except as the tariff in specific terms provides certain minimum weights for carloads in cars of certain lengths or capacities.⁶

The Commission decided that a tariff naming a rate per ton on a commodity and providing that the minimum carload weight shall be the marked capacity of the car gives the shipper the right to demand any car of recognized standard dimensions suitable for the carriage of that commodity. That if upon reasonable demand the carrier cannot supply a car of the particular size ordered, it is its duty nevertheless, to accept the shipment and move it in any available car or cars applying the rate on the basis of the marked capacity of the car ordered.⁷

A carload rate and a minimum weight for a car of definite dimensions when lawfully published in the tariffs of a car-

⁴ *Montague & Co. v. A. T. & S. F. Ry. Co. et al.*, 17 I. C. C. R. 72.

⁵ *Rice, R. & W. v. W. N. Y & P. Rd. Co.* (1888), 2 I. C. R. 298, 2 I. C. C. R. 289.

⁶ *Pacific Purchasing Co. v. C. M. & St. P. Ry. Co. et al.*, 12 I. C. R. 549.

⁷ *General Chemical Co. v. N. & W. Ry. Co. et al.*, 15 I. C. C. R. 349; affirming *Pacific Purchasing Co. v. C. & N. W. Ry. Co. et al.*, 12 I. C. C. R. 549.

rier constitutes an open offer to the shipping public to move their merchandise on those terms and it would be wholly unsound in principle to permit the carrier to impose additional transportation charges on the shipper who ordered a car of a capacity, length or dimensions specified in the tariffs, simply because it is not provided with cars of the dimensions ordered. The obligation to carry the merchandise of shippers on the basis of the published rates and minimum weights, and to use whatever cars are available for that purpose, ought to have been covered in the published tariffs of the defendant carrier by proper rules to that effect; and their tariffs were unreasonable and unlawful in not containing such a provision at the time the shipments were made.⁸

The above principles were affirmed and made the basis of decision in a number of cases.⁹

§ 134. Duty of Carrier to establish Minima Weights Consistent with the Loading Capacity of the Cars.

By the Official Classification in 1908, rough quarried granite, released to a value of 20 cents per cubic foot, was rated sixth class, with a minimum of 36,000 pounds. Building stone of all kinds was classified at sixth class, and previous to August 1, 1907, the minimum on such stone was 30,000 pounds, but upon that date was advanced to 40,000 pounds, and the reasonableness of this advanced minimum was disputed. The building stones are ordinarily shaped and cut

⁸ *Kaye & Carter Lumber Co. v. M. & I. Ry. Co. et al.*, 16 I. C. C. R. 285; affirming *Pacific Purchasing Co. v. C. & N. W. Ry. et al.*, 12 I. C. C. R. 549, and *General Chemical Co. v. C. & N. W. Ry. Co.*, 15 I. C. C. R. 349.

⁹ *Beggs v. Wabash R. R. Co.* (1909), 16 I. C. C. R. 208; affirming *American Lbr. & Mfg. Co. v. Southern Pacific Co. et al.*, 14 I. C. C. R. 561, and *General Chemical Co. v. N. & W. Ry. Co.* (1909), 15 I. C. C. R. 349; *Hanna Coal Co. v. Northern Pacific Co. et al.*, 16 I. C. C. R. 289, affirming *General Chemical Company v. N. & W. Ry. Co.*, 15 I. C. C. R. 349; *Kaye & Carter Lbr. Co. v. M. & I. Ry. Co. et al.*, 16 I. C. C. R. 285; see also *Springer v. El Paso & S. W. Rd. Co. et al.* (1909), 17 I. C. C. R. 322.

before being offered for transportation to fit the place which they are finally to occupy. They are generally boxed or crated and shipped upon flat or gondola cars. Generally strips are placed upon the car around the bottom of the stone to prevent slipping. The rules of the carrier prohibited the placing of one stone upon another. The testimony offered showed that the shippers had been unable to load upon the cars furnished them the minimum weight of 40,000 pounds for the reason that although the entire surface of the car was covered, the contents would still fall below that weight. The conclusion reached by the parties which was sanctioned by the Commission, was that the minimum weight on building stone should be fixed at 36,000 pounds for cars 36 feet in length and over, and at 30,000 pounds upon cars of less than 36 feet.¹⁰

It is not *reasonable* that carriers unable to supply shippers with sufficient cars of large or average capacity should make such minimum loading requirement as cannot be practically complied with as to the smaller cars in order that they may obtain as much earnings from shipments therein as from those in the larger and superior cars.¹¹

Defendant collected from complainant 18½ cents per 100 pounds on 60,000 pounds of wheat which was shipped in a car of 55,000 pounds maximum capacity from Kansas City, Kas., to Galveston, Texas, for export, and thus collected on 5,000 pounds more than the maximum loading capacity of the car. *Held*, That the charge was unreasonable, that the tariff provisions of the defendants prescribing a minimum weight on all shipments of wheat for export from Kansas City to Galveston was unreasonable and in direct conflict with the administrative rulings of the Commission.¹²

¹⁰ *Tayntor Granite Co. v. M. & W. River R. R. Co. et al.* (1908), 14 I. C. C. R. 136; *Jones Bros. v. Same*, 14 I. C. C. R. 139, 140, 141, 142, 143, 144, 145; *Lazarre & Barton Co. v. same*, 14 I. C. C. R. 146.

¹¹ *Weimer & Rich v. C. & N. W. Ry. Co. et al.*, 12 I. C. C. R. 462.

¹² *Rosenbaum Grain Co. v. M. K. & T. Ry. Co. et al.* (1909), 15 I. C. C. R. 499.

§ 135. Unreasonable in General for Carriers to make Minimum Weight Vary with the Size of the Car Furnished.

The Commission has ruled that minima carload weights which vary with the size of the car furnished by the carrier are unreasonable and unjust and operate to subject shippers to unjust discrimination and undue prejudice and disadvantage; and that the carrier should establish a fixed, reasonable and just minimum carload weight.¹³

§ 136. Right of Carriers to fix as Minimum Weight the Marked Capacity of the Car, where the Nature of the Traffic will Permit and the Attendant Circumstances justify it.

A low rate on stone paving blocks was made to permit shippers to compete with producers in other States, upon the condition, which was expressed in the tariff, that the minimum carload weight should be the marked capacity of the car. The complainant knew the weight of a cubic foot of paving blocks and always counted the number placed in a car; never specified the capacity of the car desired, although upon request could have had cars ranging from 40,000 to 100,000 pounds capacity; always had sufficient material to load to the marked capacity of the car received, which could have been easily loaded to and beyond that capacity and from October 1, 1904, to November 30, 1907, found no difficulty in loading to the marked capacity of the car received. Upon this record and under the circumstances the Commission decided that the regulation making the minimum carload weight the marked capacity of the car was not unjust and unreasonable.¹⁴

Actual weighing of the article or articles making up a carload is the only way by which their total weight can be ascertained to a certainty, but this practice is not always convenient, practical or even advisable and where a carload

¹³ *Suffern, Hunt & Co. v. I. D. & W. R. Co.*, 7 I. C. C. R. 255.

¹⁴ *Georgia Rough & Cut Stone Co. v. Georgia Rd. Co. et al.*, 13 I. C. C. R. 401, based on *White & Co. v. B. & O. S. W. R. R. et al.*, 12 I. C. C. R. 307.

minimum is established for a given commodity, careful consideration should be given to the character of the commodity as well as the ease or difficulty attendant upon estimating the amount required to make up the minimum weight. Most shippers do not have their own scales or the means of ascertaining the actual weight put into a car and of necessity are required to depend somewhat upon an estimate of the amount they load and whether it equals the minimum weight or exceeds the maximum. Where the commodity is not easily susceptible of a reasonably accurate estimated weight, there should be sufficient margin between the maximum and minimum weights to allow for reasonable variation between the estimated and actual weights.¹⁵

§ 137. Unreasonableness of Regulation fixing Different Minima Weights for Cars with and without Refrigeration Service.

In determining the reasonableness of the rates on peaches in crates from Atlanta and Macon, Ga., to Philadelphia, New York, Washington and Baltimore, the Commission decided that the practice of the railroads in using one minimum carload requirement for transportation service other than refrigeration and a different minimum carload for refrigeration service is unreasonable and unjust. The Commission also rules that the minimum on peaches in crates should not exceed 20,000 pounds for a 36-foot car and 22,500 pounds for a 40-foot car.¹⁶

§ 138. Unreasonableness of a Rule or Regulation fixing a Higher Minimum Loading Requirement than the Practice of the Carriers governed by the Master Car Builders' Association Rules will permit.

In the case of the *Cambria Steel Co. v. Great Northern Ry. Co.*,¹⁷ the complainant shipped 1,560,340 pounds of steel rails

¹⁵ *Georgia &c. Stone Co. v. Georgia R. Co.*, 13 I. C. C. R. 401.

¹⁶ *Waxelbaum & Co. v. A. C. L. Rd. Co.* (1907), 12 I. C. C. R. 178.

¹⁷ *Cambria Steel Co. v. Gr. Nor. R. R. Co.*, 12 I. C. C. R. 466.

from Johnstown, Pa., to Seattle, Wash., via the B. & O. R. R. Co. and Great Northern R. R. Co., upon which freight charges were assessed under the rules prescribed by the Master Car Builders' Association, which were enforced by the initial carrier, the B. & O. R. R. Co. Under the rules of the Master Car Builders' Association, of which the B. & O. R. R. Co. and Great Northern Ry. Co. are members, shippers are not permitted to load 60-foot steel rails on twin cars to a greater weight than 75 percent of the marked capacity of the cars. The aggregate marked capacity of the 40-foot cars used for these shipments was 2,100,000 pounds. The maximum permitted under the rules referred to would therefore be 1,575,000 pounds. On the arrival of the shipment at destination charges were exacted and collected by the defendant company. The exaction of the additional charges at Seattle by the defendant company was predicated upon a rule established in the Transcontinental Freight Bureau Westbound Tariff No. I. C. C. 376 which provided a minimum weight of 60,000 pounds on steel rails, carloads, unless the marked capacity of the car was less, in which the minimum weight would be the marked capacity of the car. The Commission held that the rules of the initial carrier, the B. & O. R. R. Co., governing the loading of traffic of this character was made with regard to the rules and regulations prescribed by the Master Car Builders' Association, whereas the rule of the defendant company prescribed an arbitrary minimum without regard to the requirements of the Master Car Builders' Association rule or regulation, to which association both roads were members and therefore awarded the complainant reparation to the extent of the overcharge.

§ 139. Weight to apply on Carload Shipment in Absence of published Carload Minimum Weight.

The Commission stated in the case of *Sunderland Brothers Company v. M., K. & T. Ry. Co. et al.*,^{17a} that "the absence of

^{17a} *Sunderland Bros. Co. v. M. K. & T. Ry. Co. et al.* (1910), 18 I. C. C. R. 425.

a legally established minimum carload weight suggests the inquiry as to the quantity upon which a shipper might claim the benefit of the carload weight in preference to the less-than-carload rate. And for the purpose of laying down a general rule we hold that when a car is demanded and loaded by the shipper and is tendered and otherwise handled as a carload, and no minimum carload weight is legally provided, the carload rate, if it makes less than the less-than-carload rate, must be applied on the actual weight. It lies in the power of a carrier to protect its revenues by fixing, in the manner provided by law, minimum weights to be applicable under its published carload rates. If it fails to take this precaution we think that it imposes no hardship upon it to give a shipper the benefit of the carload rate on the actual weight of the shipment tendered as a carload, whether it be more or less than an ordinary carload quantity. We dispose of this complaint on that theory, and the ruling may be understood as being applicable to all cases of this kind arising in the future."

§ 140. Minima Weights for Less-than-Carload Shipments.

¶ A. IN GENERAL.

The various freight classifications have incorporated therein a rule to the effect that one hundred (100) pounds shall be the minimum weight upon which charges shall be assessed for a single package or a number of small packages constituting one shipment. This is justified by the fact that on L. C. L. lots of freight, or small shipments, the same amount of clerical work is required, making of bills of lading, receipts, expense bills, the duplication and copying of the same, rate calculation, transfer to connecting lines, notice to consignee, receipt of freight, and divisions among the carriers conducting the transportation, whether it be a small shipment or one of several hundred pounds, the only difference being in the manual labor necessary in loading, transferring and unloading. By way of illustration, a shipment from Chicago by connecting lines to Jacksonville, Fla., would re-

ceive attention from and would come under the jurisdiction of perhaps fifty different persons; and in case the package would become mislaid or stolen the tracing thereof would require ordinarily no less than twenty-five written communications. It appears also that small packages are much more liable to be lost, misplaced or stolen than larger ones and occasion more trouble in tracing; whereas the cost of clerical labor is as much for small as for large packages or shipments, and there is little, if any, difference in the cost of other labor.¹⁸

¶ B. UNREASONABLE TO IMPOSE A MINIMUM WEIGHT GREATER THAN THE ACTUAL WEIGHT OF AN L. C. L. SHIPMENT WHEN SAME IS LOADED IN CAR WITH OTHER FREIGHT.

The defendant railroad in this case was in the practice of assessing charges on a minimum weight of 5,000 pounds on a package of plate glass loaded in a box car. The glass was covered with excelsior and packed in a hard maple box, which was nailed to the end, side, and bottom of the car into which it was loaded, together with other goods. The complainant admitted that minimum weight of 5,000 pounds on a shipment of plate glass so large that it must be loaded on a flat car was not unjust or unreasonable, but contended that it was unreasonable when glass was loaded in a box car in which other freight could be and was loaded. The Commission sustained the complainant in their contention and ordered that the defendant railroad cease and desist from assessing charges based on such minimum weight.¹⁹

§ 141. **Weights at Points of Origin and Destination considered.**

In the case of the *Topeka Banana Dealers' Association et al. v. St. L. & S. F. Co.*,²⁰ the complainants contended that

¹⁸ Wrigley v. C. C. C. & St. L. Ry. Co. et al., 10 I. C. C. R. 412.

¹⁹ Bennett v. M. St. P. & S. St. M. Ry. Co. (1909), 15 I. C. C. R. 301; see also Brunswick-Balke-Collender Co. v. Chicago, Milwaukee & St. Paul Ry. Co. et al. (1910), 18 I. C. C. R. 165.

²⁰ Topeka Banana Dealers Ass'n et al. v. St. L. & S. F. R. Co. et al., 13 I. C. C. R. 620.

the defendant's rule of assessing freight charges on shipments of bananas based on weights ascertained at the point of origin instead of assessing same on the weight of the fruit at destination was unjust and unreasonable. The facts disclosed by the evidence adduced at the hearing showed that bananas are imported into the United States from two general sections of the semi-tropics. Those coming from Jamaica, Cuba and other West Indian Islands enter the eastern ports such as Savannah and Baltimore, while those coming from Central America enter the Gulf ports and the business is practically controlled by the United Fruit Company. The boats of the fruit company reach New Orleans and Mobile and the bananas are there transferred to cars. To handle the business promptly the railroads have seven tracks which reach to the wharf, and the train of cars is "broken up" and placed on these different tracks, so that the loading may proceed rapidly. The ships are unloaded in some instances by an apparatus in the form of an endless belt with pockets, which passes down into the hold of the vessel and then out between the cars; the bananas being taken off of this belt as they pass the car into which they are to be loaded. One of the conditions on which sales are made by the Fruit Company is that "the certificate of the official weigher respecting the weight of the bananas or the fruit in any given cars, or shipment at the seaboard shall be final and conclusive on both parties;" that is, the Fruit Company and the consignee. The railroad charges are based upon the same weight. It becomes necessary therefore, to have the cars correctly weighed, and to accomplish this two weighers are designated—one the public weigher of the City of New Orleans, holding a certificate from the New Orleans Board of Trade and bonded to that corporation, who represents the Fruit Company; the other is an appointee of the Southern Weighing Association who represents the railroads. The empty cars are taken to the scales and weighed singly, each car being uncoupled from the balance of the train when on the scales. The empty weight is written on a tag and attached to the car, which is then placed on the

banana dock for loading. When loaded, the train is again moved to the scales and each car weighed separately, the net weight being thus ascertained. The scales are officially inspected by the City of New Orleans. The complainants contended that the weights were not correctly ascertained at the point of origin. Considering this contention, the Commission stated that it could not perceive how it is practicable to more correctly weigh the fruit than by the method employed at New Orleans; and the fruit is weighed in the same manner at Mobile. How two weighers more independent of each other could be secured is not known; one is practically a direct representative of the consignor from whom the complainants purchased the fruit and the other is an official appointed by the Southern Weighing Association, of which the defendants are members. That while it is possible that these weighers might be corrupted into making false returns, the same is practically true of the weighing at destination. The Commission stated that since the cars are destined to different points throughout the entire country it would be a practical impossibility for the railroads to have a representative at each unloading point. That it is true that *cattle* are weighed at destination rather than at the point of origin, but that this practice is based upon the same reasons that bananas are weighed at point of origin instead of destination. In both cases the weight is ascertained at the point where the cars are concentrated. Cattle originate at local points in the country where there are no scales and are practically all destined to great terminals, such as Omaha, Kansas City, St. Louis, Chicago, etc., where scales are to be found.

§ 142. Right of Initial Carrier to furnish any Available Equipment in the Absence of a definite Agreement with the Shipper, under a Local Any-Quantity Rate regardless of Tariffs of Connecting Lines.

In the case of *J. G. Falls & Co. v. C., R. I. & P. Ry. et al.*,²¹ the complainant tendered to the Frisco, at Malden in the

²¹ *Falls & Co. v. C. R. I. & P. Ry. Co. et al.*, 15 I. C. C. R. 269.

State of Missouri, fifty bales of uncompressed cotton linters of the aggregate weight of 22,471 pounds for transportation to Minneapolis, Minn. There was no joint through rate in effect for the transportation of cotton linters between the points named and charges were therefore assessed at the sum of the local rates based on St. Louis; the local rate from Malden, Mo., to St. Louis was 25 cents per cwt., "any quantity" via the Frisco, while there was a joint rate in effect from St. Louis to Minneapolis of 26 cents per cwt., minimum weight, 24,000 pounds, via the Burlington and Rock Island.

The shipment was loaded at Malden by the agent of the Frisco into two cars, putting 30 bales in a 40-ft. car and the remaining 20 bales into a 36-ft. car. This was made necessary by reason of the fact that they did not have on hand at Malden at that time any larger car than the 40-ft. car to take care of the movement. The bill of lading that was at once delivered to the complainant by the agent of the Frisco gave them immediate notice that the shipment had been loaded into two cars, but they took no action of any kind. The shipment was handed over to the Burlington at St. Louis in the two original cars; the 40-ft. car loaded to its visible capacity, and the other car partially loaded; the 20 bales in the second car aggregating 8988 pounds in weight. The Burlington being without special instructions or any notice of the wishes of the consignor or of his plans with respect to the final disposition of the shipment, accepted it in the form in which it was tendered and hauled the two cars to Burlington, Iowa, where they were delivered to the Rock Island. Upon the arrival of the two cars at Minneapolis the Rock Island assessed the charges from St. Louis on the 40-ft. car at the rate of 26 cents per cwt., based on a minimum of 24,000 pounds as provided therefore in the published joint tariff as stated above, and under tariff authority to that effect from St. Louis the charges on the second car were assessed at the rate of 26 cents per cwt. for the 8988 pounds which that car contained. The petitioner contended in this case that if the Frisco had supplied one

car large enough to accommodate the entire 50 bales they would have gone through from St. Louis to destination at the published carload rate (viz. 26 cents minimum 24,000 pounds), the total weight of the shipment (22,471 lbs.) being within the carload minimum weight provided in the tariff of the connecting lines and that he would thus have escaped the charges that he was compelled to pay on the second car. The Commission held, that the carrier's own published tariffs are the measure of its obligations to shippers; it cannot be controlled by the terms of the separate tariffs of its connections. That under a local any-quantity rate a shipper has the right to demand a car of a given size; that the carrier may use any available equipment notwithstanding the fact that the separate tariffs of a connecting line provided a minimum weight under a carload rate; and that the initial carrier in the absence of a definite agreement with the shipper as to the size of the car to be used is not liable to the shipper for the increased rate charges imposed upon him by reason of the fact that it delivered to the connecting line in two cars a shipment moving under the two local rates, the weight of which comes within the carload minimum weight provided for in the tariffs of the connecting line.

§ 143. Carriers charging for Weight not carried.

It is manifestly unjust, under any rule as to minimum loads or otherwise, to charge for weight not carried in a car which the carrier has furnished and into which on account of its size and the nature and bulk of the freight, the required minimum cannot be loaded.²²

§ 144. Assessing Freight Charges on purported Weights instead of the actual Weights of Shipments.

A rule of a carrier subject to the Act to Regulate Commerce, by which shipments of a stone from non-scale points are billed from such points at weights equal to the marked

²² National Hay Association v. L. S. & M. S. R. Co. et al., 9 I. C. C. R. 264, affirming Suffern, Hunt & Co. v. I. D. & W. R. Co., 7 I. C. C. R. 255.

capacity of the cars, subject to correction when weights are taken, is unreasonable, because upon such cars as are not in fact weighed before delivery the carriers proceed to collect freight on such marked-capacity weights. The Commission held, that a change of such rule to a rule that such shipments shall be billed at the published carload minimum was also indefensible and ordered the defendant carrier to desist and refrain from showing purported weights upon its billing until such weights shall have been ascertained either by weighing or by some fair method of computation from cubic contents.²³

§ 145. Allowance for Weight of Stakes, Racks and Blocks on Flat and Gondola Cars.

See Section 330, post.

§ 146. Actual Scale Weights Conclusive and not Weights marked on the Bill of Lading.

The material part of a bill of lading on the subject of the freight rate is that which fixes the rate per 100 pounds. Weighing the freight is purely a mechanical process and may be done at the point of shipment, or at the point of delivery. Where the weight of the merchandise is uniformly the same, the carrier or the consignee may ask to have the weight verified up to the moment of delivery, and it is the weight disclosed by the scales, and not the weight marked on the bill of lading, that controls.²⁴ When the bill of lading covering a shipment is conditioned that the weight stated therein is subject to correction and the weight as ascertained by re-weighing at destination shows a result greater than that stated therein, the actual weight as ascertained at destination governs.²⁵

²³ Roman-Oolitic Stone Co. v. Vandalia Rd. Co., 13 I. C. C. R. 115; same 13 I. C. C. R. 569.

²⁴ Baird v. St. L. I. M. & S. Rd. Co. (1890), 41 Fed. Rep. 592; 4 I. C. R. 422.

²⁵ Duluth Log Co. v. C. St. P. M. & O. Ry. Co. et al., 16 I. C. C. R. 38.

§ 147. Right of Shipper to rely upon Bill-of-Lading Weight when such Weight is ascertained at Point of Origin.

When a car is weighed at the point of origin and the weight is stated in the bill of lading, the shipper has a right to rely upon that weight and the carrier should only be allowed to change the weight upon satisfactory proof of the correctness of the substituted weight.²⁶

§ 148. Billing Shipments at Net Weights.

Although the fact that most shippers of a given article in part of a described territory were permitted to secure reduced rates by billing at net weight, while many other shippers of the same article in another portion of that territory paid higher rates through billing at the full weight of the package and its contents, is ample warrant for an order requiring the carriers to remove the unjust discrimination as between such shippers by discontinuing the practice of shipping at net weights in any part of the territory, yet, on the other hand, unless the net weight practice was prevalent throughout substantially the whole territory or so well known from constant and general application as to receive implied sanction, it would not of itself constitute sufficient ground for an order requiring a reduction in rates when all carriers applied their established charges on the basis of gross weights.²⁷

§ 149. Reweighing Shipments.

¶ A. IN GENERAL.

The Commission has decided that if the weights at the point of shipment are furnished by the shipper, the roads have the right to verify them by reweighing and if found to be incorrect, to charge and collect the freight on the true weight. The question, however, is one of fact to be determined in a manner just to both parties and as to which the

²⁶ Duluth Log Co. v. C. St. P. M. & O. Ry. Co. et al., 16 I. C. C. R. 38.

²⁷ Procter & Gamble Co. v. C. H. & D. R. R. Co. et al. (1903), 9 I. C. C. R. 440.

ex parte action of either in a proceeding before the Commission can not conclude the other.²⁸

¶ B. CORRECTING WEIGHTS ON CARLOAD SHIPMENTS OF COAL.

In considering the question of reweighing carload shipments of coal and correcting such weights, the Commission has recognized the reasonableness of a regulation for reweighing such commodity in case of dispute by the shipper or consignee, but declared that a regulation is unreasonable which provides that no correction will be made for variation of less than 2 percent of the billed weight, with a minimum of 1,000 pounds; and ordered that said regulation should be changed so as to provide for correction of the original weight and charges when a variation of 1 percent, with a minimum of 500 pounds is disclosed.²⁹

§ 150. Not Unlawful to charge an Increased Rate as a Penalty for Loading Cars beyond a Specified Weight above the Marked Capacity of the Car.

A carrier which had not provided track scales at stations prescribed a rule or regulation forbidding shippers to load grain in cars beyond a specified weight above the marked capacity under a so-called "penalty" of increased rates for the excess weight. The Commission held that such rule or regulation, if properly established, is not unlawful, provided the increase in charges for excessive weight is not unreasonable, and the margin between such maximum and the carload minimum weight for grain is so wide that shippers may, without scales readily comply with both rules.³⁰

§ 151. Light Loading of New Cars on First Trip.

The Commission has made the following ruling governing the loading of new cars:

"Carriers' mechanical departments have rules against load-

²⁸ Potter Mfg. Co. v. C. & G. T. R. Co. et al., 5 I. C. C. R. 514; 4 I. C. R. 223.

²⁹ Rice v. Georgia Rd. Co. et al., 14 I. C. C. R. 75.

³⁰ Suffern, Hunt & Co. v. I. D. & W. R. Co., 7 I. C. C. R. 255.

ing to its full capacity a new car on its first trip. This rule is understood to generally provide that such car shall not on its first trip be loaded to more than 75 percent of its capacity. The Commission is requested to pass upon the question of conflict between the tariff minimum and the mechanical department's rule.

• "All new cars are now of much greater capacity than those of a few years ago, and carload minima have also been increased. The number of commodities that are shipped in closed cars and that ordinarily are loaded to the full capacity of the car are comparatively few. Except in times of actual car shortage there would seem to be but little difficulty in selecting for such new cars loading that would bring no conflict between the tariff and the mechanical department's rule. The tariff is the one which the carrier is by law obligated to observe and maintain. It is not possible to authorize setting aside the tariff requirements without creating or making possible discriminations. There is no objection to incorporating in the tariff a rule that the minimum weight applicable to a new car on its first loading shall be a certain percentage of its capacity or of the minimum fixed in the tariff. We adhere to the view that the rule governing minimum weight shall be contained in a lawful tariff and that it must be applied and observed."³¹

§ 152. Estimated Weights on Standard Packages.

¶ A. IN GENERAL.

As is well known there are many commodities shipped in containers or packages of fixed dimensions that are recognized as standard. These commodities are generally moved by the carriers upon estimated weights assigned to each container or package. The sole and only purpose of adjusting rates in that manner, as the Commission understands it, is to avoid the delay, expense and labor incident to the actual weighing of each particular shipment. It is understood also

³¹ Rule 66, Tariff Circular 17-A.

that the estimated weights for standard containers or packages are intended to be the fair average actual weight, and are not fixed for the purpose of giving either the shipper or the carrier an advantage in the matter of freight charges. On the contrary, it is understood that tariffs are established simply to expedite the service and minimize the labor and expense of carriage.³²

The Commission has recognized the right of carriers, in order to facilitate the movement of business, to fix an estimated weight upon certain standard packages upon which a rate is based. This estimated weight is taken into consideration in the making of the rate itself, and the reasonableness of such estimated weights may be passed upon by the Commission.³³

Certain standard packages, such as barrels of flour, have an estimated weight based upon experience of actual weights, and this is true of many commodities that are shipped in packages. Estimated weights of articles measured by the cubic foot or cubic yard can be made very near to the actual weight.³⁴

It is not unlawful to bill shipments at proper estimated weights per package when the actual weight cannot be ascertained without great inconvenience to the shipper or carrier, and when charges are promptly adjusted by the carrier upon the basis of actual weights furnished by the consignee.³⁵

¶ B. COTTON IN BALES.

When actual weights of cotton shipments cannot be ascertained without great inconvenience to the shipper or carrier, and when transportation charges are promptly adjusted by the carrier upon the basis of actual weights furnished the consignee, a practice of billing the cotton at a proper esti-

³² *Davies v. Ill. Cent. Rd. Co.* (1909), 16 I. C. C. R. 376.

³³ *White & Co. v. B. & O. S. W. Rd. Co.* (1907), 12 I. C. C. R. 307.

³⁴ *Georgia Rough & Cut Stone Co. v. Georgia Rd. Co. et al.*, 13 I. C. C. R. 401.

³⁵ *Phelps & Co. v. T. & P. Ry. Co.* (1893), 4 I. C. R. 363; 6 I. C. R. 36.

mated weight per bale should not be deemed unlawful. However, such plan will be unlawful if the refund of such excessive charges is delayed for a considerable period.³⁶

¶ C. VEGETABLES.

Published tariffs specifying rates per standard crate on vegetables should state plainly the weight or dimensions of the crate to which the rates apply.³⁷

¶ D. APPLES.

The carriers in the Official Classification Territory obtained throughout that territory an estimated weight of 160 pounds per barrel on apples through a period of about seven years without protest to the Commission or application for relief on the part of the shipper or the public. The Commission held that because one shipper dealt in apples weighing less to the barrel than apples of some other variety, and thus paid a few cents more per 100 pounds than did a shipper who handled a different and heavier variety of apples it did not follow that the rule as to estimated weights was unfair, taking all apple shipments together.³⁸

§ 153. Rules to govern where Different Capacity Cars are furnished by the Carrier than ordered by the Shipper.

Carriers provide cars of varying dimensions and capacities, and they provide minimum weights for the several kinds of cars based upon those dimensions and capacities. At times when transportation facilities are inadequate to supply the demand upon them it is frequently difficult or impossible for the carrier to furnish a shipper with a car of the dimensions or capacity desired by him, although the carrier has in its tariffs provisions for the use of such car. Manifestly it is not equitable or proper to require the would-be ship-

³⁶ *Phelps & Co. v. T. & P. Ry. Co.* (1893), 4 I. C. R. 363; 6 I. C. R. 36; *Jerome Hill Cotton Co. v. M. K. & T. Ry. Co.*, 6 I. C. C. R. 601.

³⁷ In the matter of *Alleged Unlawful Charges for Transportation of Vegetables, etc.*, v. *S. F. & W. Ry. Co.* (1900), 8 I. C. C. R. 585.

³⁸ *White & Co. v. B. & O. S. W. Rd. Co. et al.* (1907), 12 I. C. C. R. 307.

per to pay additional transportation charges for the privilege of using a car of different dimensions or capacity from that which would suit his shipment or forego entirely his desire to ship.³⁹

Some carriers provide elastic rules which properly permit the use of cars of different dimensions or capacities when they are furnished by the carrier in lieu of those desired or ordered by the shipper. Other carriers do not so provide, and as a result many instances arise in which the initial carrier under such provisions furnishes the shipper with cars at its convenience and connecting carriers that have not adopted similar provisions assess higher charges in accordance with their tariffs, and, in the view of the Commission, unreasonable charges.⁴⁰

The Commission believes it to be the duty of every carrier to incorporate in its tariff regulations a rule to the effect that when carrier cannot promptly furnish car of capacity or dimensions desired by the shipper, and for its own convenience does provide a car of greater capacity or dimensions than that ordered, such car may be used on the basis of the minimum carload fixed in the tariffs for cars of the dimensions or capacity ordered by the shipper, provided the shipment could have been loaded into or upon car of the capacity or size ordered,⁴¹ and that if a car of smaller capacity than that ordered by the shipper is furnished, it may be used on the basis of actual weight when loaded to its full visible capacity, or that portion of the shipment which cannot be loaded into the smaller car will be taken in another car and the shipment treated as a whole on the basis of the minimum fixed for the car ordered by the shipper; and that if the carrier is unable to furnish a car of large dimensions, ordered by the shipper, it may furnish two smaller cars

³⁹ Administrative Ruling 77, Tariff Circular 15-A. This ruling was made the basis for reparation in the cases of *American Lbr. & Mfg. Co. v. Southern Pacific Co. et al.*, 14 I. C. C. R. 561, and *Carstens Packing Co. v. Northern Pacific Ry. Co.*, 14 I. C. C. R. 577.

⁴⁰ *Ibid.*

⁴¹ Rule 66, Tariff Circular 17-A as amended by Supplement No. 1.



which may be used on the basis of the minimum fixed for the car ordered; it being understood that shipper may not order a car of dimensions or capacity not provided for in the carrier's tariffs.⁴²

In all such cases the capacity of the car ordered, the date of such order, the number, initial and capacity of the car furnished should be stated on the bill of lading and the carrier's waybill.⁴³

In case of controversy between shipper and carriers caused by absence of such rule from tariffs which provide graduated minima for cars of different sizes the Commission will regard such tariffs as prima facie unfair and unreasonable.⁴⁴

It is the duty of the carriers to provide reasonable facilities for transportation, and if they can not furnish equipment to move the carloads provided for in their regulations it is clearly their duty to provide some other method of transporting as one shipment, and at the rate named therefor, such carload weight when tendered by shipper.⁴⁵

In the case of *American Lumber & Mfg. Co. v. Southern Pacific Co. et al.*,⁴⁶ it appears that the complainant made a shipment of lumber weighing 39,500 pounds from Paper Mills, Oreg., to Queen Junction, Pa. It ordered a car of 40,000 pounds capacity and was furnished one of 80,000 pounds capacity. Protest was made at the time of loading, and the carrier's representative, in order to prevent delay, advised the complainant to load the car and take up the matter of the charge later with the traffic department of the company. The tariffs of the defendants west of Chicago provide that freight should be collected on the basis of a minimum weight of 60,000 pounds for a car of 80,000 pounds capacity. The rate being 62½ cents per 100 pounds, a charge

⁴² Ibid.

⁴³ See Note 39, supra.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ *Amer. Lbr. & Mfg. Co. v. Southern Pacific Ry. Co. et al.*, 14 I. C. C. R. 561.

of \$375 was made and collected, the 60,000-pound minimum being applied. Complainant claims that it should have been charged only upon the actual weight for the entire haul at the rate of 62½ cents, or \$246.88, and was therefore overcharged \$128.12. The question raised is whether that provision in the tariff which required the payment of freight based on the fixed minimum applicable to 80,000 pounds capacity car should govern a shipment where an 80,000 pounds capacity car is furnished in lieu of a car of 40,000 pounds capacity ordered by the shipper. The Commission awarded the complainant the reparation asked for.⁴⁷

The commission has awarded reparation because of excess weight charged on shipment of wagons, where two cars of smaller size, but of greater aggregate minimum weight were furnished by the carrier instead of one car of smaller minimum weight as ordered by the shipper, which would have held the wagons; and where such cars were loaded by the shipper under protest.⁴⁸

Where a shipper orders a car of a certain capacity and the carrier for its own convenience furnishes a car of a larger capacity, it is the duty of the carrier to assess charges on the basis of the car ordered.⁴⁹

A carload rate and minimum weight, specified in a published tariff as applicable to a car of a stated size, constitute a definite offer to the shipping public to move the commodity on those terms, and when a shipper has ordered a car of that capacity the Commission has stated that it would not sanction the imposition upon him of additional transportation charges

⁴⁷ *Amer. Lbr. & Mfg. Co. v. Southern R. Co.*, 14 I. C. C. R. 561.

⁴⁸ *Racine-Sattley Co. v. C. M. & St. P. Ry. Co. et al.* (1909), 16 I. C. C. R. 488; see also *Jobbins v. C. & N. W. Ry. Co. et al.* (1909), 17 I. C. C. R. 297; also *Maldonado & Co. v. Ferrocarril de Sonora, et al.* (1910), 18 I. C. C. R. 65.

⁴⁹ *Hanna Coal Co. v. Northern Pacific Ry. Co. et al.*, 16 I. C. C. R. 289; predicated on *Pacific Purchasing Co. v. C. & N. W. Ry. Co. et al.*, 12 I. C. C. R. 549; *General Chemical Co. v. N. & W. Ry. Co. et al.*, 15 I. C. C. R. 349; and *Kaye & Carter Lbr. Co. v. M. & I. Ry. Co. et al.*, 16 I. C. C. R. 285.

on a shipment that had been loaded into such car when the carrier for its own convenience furnishes him a large car.⁵⁰

Where a carrier's tariff provides that the minimum weight of a carload shipment shall be the "marked capacity of the car," if upon reasonable demand the carrier cannot supply a car of the particular size ordered, it is the duty nevertheless to accept the shipment and move it in any available car or cars, applying the rate on the basis of the marked capacity of the car ordered.⁵¹

In view of the confusion that not infrequently follows the absence of a written record of a demand for a car of specific length for a particular movement, the Commission has cautioned shippers to give their orders for equipment in writing, or promptly to conform the orders in writing when given verbally.⁵²

§ 154. Penalty for False Weighing, False Reporting and False Billing of Weights of Shipments by Carrier or its Agent.

See *Section 760, post.*

§ 155. Penalty for False Weighing by Shipper or its Agent.

See *Section 761, post.*

§ 156. Overcharge account of Excess Weight.

See *Section 410, post.*

§ 157. Carload Minima applying in Connection with Refrigeration Service.

The carload minima applying in connection with the re-

⁵⁰ *Kaye & Carter Lumber Co. v. M. & I. Ry. Co.* (1909), 17 I. C. C. R. 209.

⁵¹ *Beggs v. Wabash Rd. Co.*, 16 I. C. C. R. 208, following *American Lbr. & Mfg. Co. v. Southern Pacific Co. et al.* (1908), 14 I. C. C. R. 561, and *General Chemical Co. v. N. & W. Ry. Co.* (1909), 15 I. C. C. R. 349.

⁵² *Pope Mfg. Co. v. B. & O. Rd. Co. et al.* (1910), 17 I. C. C. R. 400.

frigeration service should not exceed the minima governing the transportation charges.⁵⁴

Where the minima are different, the carrier should make them uniform. The Commission stated that while there might have been some reason before the passage of the amendment to the Act of June 29, 1906, for maintaining different minima, on the theory that the transportation and refrigeration charges were made by different companies, that is not now the case, as the carrier furnishes both.⁵⁵

⁵⁴ Ozark Fruit Growers Assn. v. St. L. & S. F. Co. (1909), 16 I. C. C. R. 106, following Waxelbaum & Co. v. A. C. L. Ry. Co. et al., 12 I. C. C. R. 178.

⁵⁵ Ibid.

CHAPTER XI.

EQUIPMENT, CAR SUPPLY AND DISTRIBUTION, CAR SHORTAGE.

SECTION

158. Duty of Carriers to furnish Cars for Transportation Purposes.
159. Duty of Carriers to furnish Cars in Suitable Condition for Use.
160. Method of acquiring Equipment Optional with the Carrier.
161. Carriers cannot compel Shippers to furnish Cars for the Transportation of Their Traffic.
162. Private Cars in Freight Traffic.
163. Cars secured by Carriers from Individuals, Car Companies and Foreign Railroads.
164. Right of Shippers to use Private Cars.
165. Rules covering Distribution of Cars among Shippers.
166. Carrier bound by Acts and Representations of its Agents.
167. Refusal of Shipper to accept Cars until Claim for Alleged Damage is paid.
168. Interchange of Cars between Connecting Carriers.
169. Discrimination in the Distribution of Cars.
170. Carriers must send Cars through, or transfer Shipments en route.
171. Return of Cars to Owner.
172. Jurisdiction of the Interstate Commerce Commission.
173. State Regulation of Carrier's Duty to furnish Cars.
174. Causes of Car Shortage.
175. Relation between a Shortage of Cars and an Insufficiency in Other Facilities.
176. Proposed Remedies for Car Shortage.

§ 158. Duty of Carriers to furnish Cars for Transportation Purposes.

¶ A. IN GENERAL.

A railroad which lives by virtue of a public grant and in the exercise of *quasi*-public powers is primarily obliged to discharge its functions with an eye to the welfare of the public which it serves and to avoid any policy of opera-

tion which may result injuriously to its dependent communities.¹

It is a common-law and charter duty of every railway carrier subject to the Act to Regulate Commerce to furnish a proper and adequate car equipment for all the reasonable needs of the business it advertises and undertakes to do, and if the carrier fails to do this, to the wrongful injury of the shipper, it is liable in damages therefor.²

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*), after defining the word "transportation" to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage irrespective of ownership or of any contract, express or implied for the use thereof," states that "it shall be the duty of every carrier subject to the provisions of the Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and joint and reasonable rates applicable thereto, and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto."

It is the duty of the carrier to equip its road with the means of transportation, and, in the absence of exceptional conditions, those means must be open impartially to all shippers of like traffic.³

It is the duty of the carrier to furnish an adequate and suitable car equipment for all the business which it under-

¹ In the Matter of Car Shortage and other Insufficient Transportation Facilities (Jan. 2, 1907), 12 I. C. C. R. 561.

² Scofield et al. v. L. S. & M. S. Ry. Co. (1838), 2 I. C. R. 67; 2 I. C. C. R. 90; In the Matter of Charges for Transportation and Refrigeration of Fruit (1905), 11 I. C. C. R. 129; In the Matter of Charges for Transportation and Refrigeration of Fruit, etc. (1904), 10 I. C. C. R. 360; Rice v. L. & N. Rd. Co. (1888), 1 I. C. R. 722; 1 I. C. C. R. 503.

³ Independent Refiners' Association v. W. N. Y. & P. R. Co. (1892), 4 I. C. R. 162.

takes, and also whatever is *essential* to the safety and preservation of the traffic in transit.⁴

¶ B. REFRIGERATOR CARS.

The first section of the Act to Regulate Commerce after defining the term "transportation" to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the * * * *ventilation, refrigeration or icing* * * * of property transported," declares that "it shall be the duty of every carrier subject to the provisions of the Act to provide and furnish such *transportation* upon reasonable request therefor and to establish through routes and just and reasonable rates applicable thereto."

Prior to the amended Act to Regulate Commerce, portions of which are above quoted, the Commission repeatedly expressed the opinion and the Supreme Court of the United States decided, that where a railroad company held itself out as a common carrier of perishable freight it was the duty of such carrier to furnish proper facilities to insure the safe delivery of such freight at destination. Under the Act as changed by the Hepburn Amendment of June 29, 1906, common carriers subject thereto may not lawfully *refuse* transportation as therein described, but must upon reasonable request afford the same upon established rates filed and kept posted as required by law.⁵

¶ C. COAL CARS.

A railroad company is required to furnish sufficient facilities at all times to transport the merchandise of shippers along its route, but it often occurs in the coal industry in

⁴ The Truck Farmers Association of Charleston v. N. E. R. Co. of S. C. et al., 6 I. C. R. 295.

⁵ Waxelbaum & Co. v. A. C. L. R. R. Co. et al. (1907), 12 I. C. C. R. 178, reaffirmed in Standard Lime & Stone Co. et al. v. Cumberland Valley Rd. Co. et al. (1909), 15 I. C. C. R. 620.

certain of the winter months of the year that the demand for coal is far beyond the car capacity of the railroad company; a railroad company is not, therefore, required to keep a car equipment sufficiently extensive to meet the maximum output at any part of the year, but it is only required to furnish car facilities to coal shippers to meet a demand adjusted and regulated to utilize the company's car equipment with uniformity and regularity throughout the year.⁶

§ 159. Duty of Carriers to furnish Cars in Suitable Condition for Use.

¶ A. FREIGHT CARS.

It is the duty of a common carrier to furnish the shipper with cars in proper condition for use in the shipment of his freight, and in such condition that he shall not be put to any expense in preparing them for shipment, such as cleaning and repairing the cars.⁷

After a car has just returned from one long journey, it is the duty of the carrier, before permitting it to start out loaded on another distant run, in which the lives and safety of brakemen, trainmen and the property of the shipper will be involved, to have such car carefully inspected by a competent inspector in order to ascertain whether it is in a safe condition for such service.⁸

¶ B. PASSENGER CARS.

The question of equipment in passenger traffic is a matter of vital importance to the public and lies in the direction of holding every common carrier by rail to the strictest responsibility in furnishing safe, suitable and sufficient car equipment for the transportation of persons over its line; and the law-making power in enacting the Act to Regulate

⁶ Logan Coal Co. v. Pennsylvania Rd. Co. (1907), 154 Fed. Rep. 497.

⁷ Hezel Milling Co. v. St. Louis A. & T. H. Rd. Co. et al. (1891), 5 I. C. C. R. 57; 3 I. C. R. 701.

⁸ Michigan Congress Water Co. v. Chicago & G. T. Ry. Co. (1889), 2 I. C. C. R. 594; 2 I. C. R. 428.

Commerce has not undertaken to divide this responsibility with the carrier in the selection of its cars.⁹

§ 160. Method of acquiring Equipment Optional with the Carrier.

A railroad company may acquire cars by construction, by purchase or by contract for their use, and no one has the power to compel a railroad company to select among these several modes or to contract with all comers.¹⁰

Carriers are left by the law to procure equipment for their business by lease as well as otherwise.¹¹ They may lease equipment from other roads.¹² How cars shall be provided is entirely a matter of private contract; and whether private cars of companies or persons shall be hauled is a matter of discretion and private agreement.¹³

§ 161. Carriers cannot compel Shippers to furnish Cars for the Transportation of Their Traffic.

It is a carrier's duty to equip its road with instrumentalities of carriage, suitable for the traffic it undertakes to carry, and to furnish them alike to all who have occasion for their use, and its duty to furnish equipment cannot be transferred to nor required of shippers.¹⁴

§ 162. Private Cars in Freight Traffic.

The use of private cars in freight traffic at the present time may be divided into two general classes, those in which the property of the owner of the car is transported.

⁹ Worcester Excursion Car Co. v. Penna. Rd. Co. (1890), 2 I. C. R. 792; 3 I. C. C. R. 577.

¹⁰ Worcester Excursion Car Co. v. Penna. Rd. Co. (1890), 2 I. C. R. 792; 3 I. C. C. R. 577.

¹¹ Consolidated Forwarding Company v. Southern Pacific Co. et al. (1902), 9 I. C. C. R. 182.

¹² In the Matter of Charges for the Transportation and Refrigeration of Fruit, etc. (1904), 10 I. C. C. R. 360.

¹³ See note 9, supra.

¹⁴ Rice, R. & W. v. W. N. Y. & P. R. Co. (1890), 4 I. C. C. R. 131; 3 I. C. R. 162.

and those in case of which the owner is not interested in the contents of the car.¹⁵

In the first class the shipper owns the car, and the car is ordinarily only used for the carriage of the property of the owner.¹⁶

In the second class the cars are usually owned by some private car company, which constructs or purchases the car, keeps it in repair, and leases it to the railroad company.¹⁷

The most important kinds of private cars in freight traffic are refrigerator cars, tank cars, stock cars and coal cars.¹⁸

The use of the private car originated in the necessity for special equipment to serve a particular purpose.¹⁹ Live stock, for example, is transported over long distances. In the course of such transportation the animal shrinks in weight and deteriorates in selling quality, besides suffering from want of water, and from crowding and trampling. Hence, the dictates of both interest and humanity require that the animal should be transported as comfortably as possible. And this has led to many attempts to devise a car in which stock could be fed, watered, and carried without injury.²⁰

As another example, the refrigerator cars, in which fresh meats and other perishable traffic are carried, came into use because a car was needed which would insure to its contents a cool and even temperature. From the first crude designs, by test and experiment, the modern refrigerator car has been evolved, and the use of this particular kind of vehicle has grown to large proportion.²¹

The advantages, disadvantages, and evils growing out of the use of private cars are summarized by the Commission

¹⁵ Seventeenth Annual Report of I. C. C. (1903).

¹⁶ Ibid.

¹⁷ Seventeenth Annual Report of I. C. C. (1903).

¹⁸ Twentieth Annual Report of I. C. C. (1906).

¹⁹ See note 15, *supra*.

²⁰ Ibid.

²¹ See note 18, *supra*.

in its reports to Congress for the years 1903 and 1904 to which the reader is referred.

§ 163. Cars secured by Carriers from Individuals, Car Companies and Foreign Railroads.

¶ A. TRANSPORTATION OF CARS OWNED BY SHIPPERS.

The law does not forbid a carrier from obtaining cars from a shipper for the transportation of such shipper's freight over its line, but in every such transaction the carrier at its peril, must see to it that a shipper furnishing his own cars, receives no other or different rates than other shippers who use the cars of the carrier for a similar purpose.²²

¶ B. ALLOWANCE BY CARRIERS OF MILEAGE FOR USE OF PRIVATE CARS.

See *Section 331, post*.

¶ C. CARRIER NOT BOUND TO TRANSPORT A PRIVATE CAR IN AN UNSAFE CONDITION.

A carrier has the right to refuse to transport a private car for a shipper which is in an unsafe or unsuitable condition.²³

¶ D. A CARRIER MAY REFUSE TO HANDLE PRIVATE CARS.

A carrier may lawfully decline to haul private cars at all, or it may haul private cars of one class and refuse to haul others of a wholly different class; but if it transports private cars of any class, it must in like manner and upon like terms transport all private cars occupied for the same or similar purposes.²⁴

In determining whether it will in any case transport private cars of a certain class, the carrier may properly

²² Scofield et al. v. L. S. & M. S. Rd. Co. (1888), 2 I. C. R. 67; 2 I. C. C. R. 90.

²³ See note 8, *supra*.

²⁴ Carr v. Northern Pacific Ry. Co. (1901), 9 I. C. C. R. 1; Chappell v. L. & N. R. R. Co. et al. (1910), 19 I. C. C. R. 56.

take into account the effect of the practice upon the interests and localities it serves; but the right of a shipper to have his car hauled does not depend upon the wishes of his business rivals.²⁵

¶ E. DISCRIMINATION IN HAULING PRIVATE CARS.

See *Section 373, post*.

¶ F. CARRIERS MAY LEASE CARS FROM SHIPPERS.

Carriers are not prohibited under the Act to Regulate Commerce from leasing cars from a shipper.²⁶

¶ G. CARRIERS MAY LEGALLY LEASE EQUIPMENT FROM ONE PARTY AND REFUSE TO ENTER INTO SUCH AN ARRANGEMENT WITH OTHER PARTIES.

Carriers are not compelled to contract with all shippers for the use of their cars simply because they so contract with one.²⁷

A railroad company may undoubtedly enter into a contract with another road or a car-line company to supply it exclusively with refrigerator cars for the transportation of perishable commodities over its lines.²⁸

¶ H. A CARRIER MAY LEGALLY ARRANGE TO HAUL CARS OF ONE CAR COMPANY AND REFUSE TO HAUL THOSE OF ANOTHER.

In the case of *The Worcester Excursion Car Co. v. The Penn-*

²⁵ *Carr v. Northern Pacific Ry. Co.* (1901), 9 I. C. C. R. 1; *Chappell v. L. & N. R. R. Co. et al.* (1910), 19 I. C. C. R. 56.

²⁶ See note 9, *supra*.

²⁷ See note 11, *supra*.

²⁸ *Re Transportation, etc., of Fruit* (1904), 10 I. C. C. R. 360. This has been settled by the Supreme Court of the United States in *Pullman Palace Car Co. v. Missouri Pacific R. Co.*, 115 U. S. 587; 29 L. ed. 499; 6 Sup. Ct. Rep. 194; *Express Cases*, 117 U. S. 1; 29 L. ed. 791; 6 Sup. Ct. Rep. 542, 628. Still more directly in point are those cases in which it has been held that a railway may provide facilities for receiving and delivering live stock by the making of an exclusive contract with one of two or more stockyards operating at the same point; *Central Stock Yards Co. v. L. & N. R. Co.*, 192 U. S. 568; 48 L. ed. 565; 24 Sup. Ct. Rep. 339; 63 L. R. A. 215; *Railroad Commission v. L. & N. R. Co.* (1904), 10 I. C. C. R. 173.

sylvania Railroad Company,²⁹ the complainant was a corporation organized for the purpose of building, constructing, furnishing and keeping in repair cars to be run upon railroads for the use of pleasure and hunting parties and excursions. The cars it manufactured and used for this purpose had a general resemblance to the sleeping cars in use throughout the country. At the time there were several car companies in the country doing a like business, and among them the leading sleeping car companies, the Pullman and the Wagner. The defendant refused to receive the cars of the complainant and draw them over its lines. It made several objections to doing so, among which was that it had a contract with the Pullman Palace Car Company whereby it obligated itself to draw for the general use and convenience of the traveling public the sleeping cars of that company exclusively, and also its cars which were hired out for excursions, as were those of the complainant.

The Commission per Bragg, *Commissioner*, held: That where a railroad company has by an arrangement with one car company procured a sufficient supply of sleeping and excursion cars for all the business of its lines, and refuses to haul excursion cars of other private car companies over its track for this reason, it cannot be forced to do so against its objection;

That unless the contrary is imposed as conditions in the grant of its charter, the right to construct and operate a railroad is a franchise in its nature exclusive, not held in common with the public, though the grant of the franchise is for the public use; and the tracks of a railroad are not a common highway upon which anyone can enter and use his own cars for transportation purposes against the objection of the company owning the tracks;

That it would be directly at war with the rights and safety of the traveling public, as well as of the railroad company, if the line of the carrier should become an arena over which it should be compelled to make a contract of some sort

²⁹ See note 15, *supra*.

with every car company or inventor of cars, and transport the public in trains of which such cars were a part.

To an application for a writ of mandamus to compel a carrier to transport relator's stock in cars of a certain livestock transportation company the respondent set forth that it had entered into a contract with another transportation company by which that company was to furnish respondent a certain number of cars per year; that such cars were available to all shippers of stock; that they were much more useful to defendant than other livestock cars, in that they could be converted into coal cars when not used for livestock; and that defendant paid mileage for the use of the cars. *Held*, That the refusal to transport relator's stock in cars offered at the same rates charged for stock in the other cars was not an "unjust discrimination" in favor of the transportation company, whose cars respondent was using, within the meaning of the Interstate Commerce Act, as the circumstances and conditions were not substantially similar.³⁰

¶ I. CARRIERS MAY REFUSE TO HANDLE CARS OF EXPRESS COMPANIES.

Railroad companies are not required by usage, or by the common law, to transport the traffic of independent express companies over their lines in the manner in which such traffic is usually carried and handled.³¹

Railroad companies are not obliged either by the common law or by usage to do more as express carriers than to provide the public at large with reasonable express accommodations; and they need not in the absence of a statute furnish to all independent express companies equal facilities for doing an express business upon their passenger trains.³²

³⁰ United States, ex rel. Morris, et al., v. D. L. & W. Rd. Co. (1889), 40 Fed. Rep. 101.

³¹ Express Cases (1885), 117 U. S. 1; 29 L. ed. 791; 6 Sup. Ct. Rep. 542.

³² Ibid.

¶ J. RESPONSIBILITY OF CARRIERS FOR EQUIPMENT SECURED FROM FOREIGN SOURCES.

When a carrier accepts and uses for transportation cars owned by shippers or others, in legal contemplation it adopts them as its own for purposes of rates and carriage, and neither the manner of acquiring cars, nor inability to furnish its general patrons the use of cars similar to those furnished by some shippers for their own traffic, can excuse or justify a carrier for discrimination in rates that may give one shipper advantages over another; nor can any device such as the payment of unreasonable rent for the use of cars furnished by shippers, be practiced to evade the duty of equal charges for equal service.³³

Primarily the line of the railroad is constructed for the transportation of its own cars, but if the diversities and peculiarities of the traffic are such that it is not always practicable for the carrier to supply all of its rolling stock from cars owned by it and it is necessary to obtain some portion of it from others, then the carrier at its peril must see to it that the rates charged are no higher on cars owned by it than they are on the cars it has obtained from others.³⁴ This is true both as to passenger and freight service.³⁵

In case of *Scofield et al. v. L. S. & M. S. R. Co.*,³⁶ the Commission held that the law does not forbid a carrier from obtaining cars for the transportation of freight over its line from other carriers or from shippers, but in every instance the rates of freight must be exactly the same, and none other, as they would be if such cars were owned by the carrier so using them; and in every such transaction the carrier at its peril must see to it that a shipper furnishing his own

³³ See note 14, *supra*.

³⁴ *Worcester Excursion Car Co. v. Penna. Rd. Co.* (1890), 2 I. C. R. 792; 3 I. C. C. R. 577; affirming principle laid down in *Rice v. L. & N. R. Co.* 1 I. C. R. 722; 1 I. C. C. R. 503 and *Scofield v. L. S. & M. S. R. Co.* (1890), 2 I. C. R. 67; 2 I. C. C. R. 90.

³⁵ *Ibid.*

³⁶ See note 22, *supra*.

cars, receives no other or different rate than other shippers who use the cars of the carrier for a similar service.

Where a carrier pays mileage for a car which it employs in the service of shippers, it is the carrier, and not the party or company from whom the car is rented, who furnishes the car to the shipper, and in such case there is no privity of contract between the car owner and the shipper.³⁷

The first section of the Act to Regulate Commerce defines the term "transportation" as including "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of contract, express or implied for the use thereof."

During the performance of the transportation the car is to every practical intent the car of the railroad company using it, and its measure of responsibility as to the sufficiency of the car is the same, whether it obtains the car by purchase or lease.^{37a}

¶ K. RIGHT OF A CARRIER TO CHARGE DIFFERENT RATES FOR HAULING DIFFERENT CLASSES OF PRIVATE CARS.

Where the difference in cost or character of service is substantial, either in the work performed by the carrier or in its utility and value to the person served, a carrier may lawfully charge a higher rate to haul one class of private cars than it charges for a different class; a fair relation of rates meeting the carrier's obligation.³⁸

¶ L. EXCLUSIVE USE OF PRIVATE CARS BY OWNERS THEREOF.

Ownership of a car rented to a carrier and for the use of which the carrier pays a full consideration, does not of itself entitle the owner to the exclusive use of such car, and if the owner may in the contract of hire to the carrier stipulate for the exclusive use of the car, it must be upon such terms as shall not constitute an unjust discrimination against

³⁷ See note 4, *supra*.

^{37a} In the Matter of Charges for Transportation and Refrigeration of Fruit, etc. (1905), 11 I. C. C. R. 129.

³⁸ See note 24, *supra*.

shippers of like traffic in cars owned by the carrier and who are excluded from the use of the car so hired.³⁹

¶ M. RATES AND RULES FOR HAULING PRIVATE CARS SHOULD
BE STATED IN TARIFF.

See *Section 461, Paragraph O, post.*

§ 164. Right of Shippers to use Private Cars.

While the right to use private cars may doubtless be denied to shippers by appropriate legislation, in the absence of specific enactment to that effect the Commission has stated that it is not prepared to say that their use in itself is unlawful; but if there results under a given set of circumstances an unlawful advantage to their owners and an unlawful disadvantage to other shippers, a question is presented, which under existing legislation is within the control of the Commission and may be made the basis of such relief as the facts may justify.⁴⁰

§ 165. Rules covering Distribution of Cars among Shippers.

¶ A. DUTY OF CARRIERS TO ESTABLISH REASONABLE REGULATIONS
AFFECTING THE FACILITIES FOR TRANSPORTATION.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*), makes it the duty of all common carriers subject to its provisions to establish, observe and enforce just and reasonable regulations and practices affecting the facilities for transportation.

¶ B. FIXED RULES DIFFICULT.

No exact rule can be laid down to govern the general distribution of cars between different localities and different species of traffic. Shippers must be reasonable in their demands and carriers diligent and honest in meeting those demands.⁴¹

³⁹ See note 3, *supra*.

⁴⁰ *Ruttle v. P. M. R. R. Co.*, 13 I. C. C. R. 179.

⁴¹ *Hawkins v. W. & L. E. R. R. Co.* (1902), 9 I. C. C. R. 212.

¶ C. MEETING THE DEMANDS OF SHIPPERS.

Manifestly it is the duty of the carrier to accommodate the needs and necessities of its shippers in regard to supplying cars, as much as possible without undue discrimination; but as a practical matter it is not possible for carriers to furnish all shippers with just such cars as they would like and in such number and at such days and hours as would best serve the interests of shippers.⁴²

¶ D. FAILURE OF CARRIER, DURING CAR SHORTAGE, TO FURNISH CARS AS RAPIDLY AS ORDERED BY THE SHIPPER.

The inability of a carrier to furnish a shipper instantly upon demand all the cars it needs for the shipment of his commodities, resulting from a "car famine," is not subjecting that shipper to "any undue or unreasonable prejudice or disadvantage in any respect whatever" within the meaning of Section 3 of the Act to Regulate Commerce, where there is no preference shown between shippers. In a crisis of this kind, if carriers cannot furnish sufficient cars to all the shippers along its line for the movement of their freight, then it is its duty to furnish its cars to shippers in proportion to their shipments over its line, upon a basis that is relatively and substantially just.⁴³

In other words, inasmuch as it is the duty of a common carrier to provide adequate equipment for the business of its line if in times of special pressure some one must wait, the annoyance must be distributed with all possible equality, and in this respect regular customers are not entitled to preference over occasional customers.⁴⁴ In times of temporary car shortage, a railroad can only be required to do its best and to treat its patrons without undue preference.⁴⁵

While the capacity of a shipper of coal, for example, may

⁴² American Creosoting Works v. Ill. Cent. Rd. Co., 15 I. C. C. R. 160.

⁴³ Riddle, Dean & Co. v. P. & L. E. R. R. Co. (1888), 1 I. C. C. R. 374; 1 I. C. C. R. 688.

⁴⁴ Ibid.

⁴⁵ See note 41, supra.

be greater than his allotment of cars, yet where such is also the case with every other operator similarly situated in the coal field, it is the duty of the railroad company, when the supply of coal cars is short, to prorate the supply on hand, without unjust discrimination, among all the operators.⁴⁶

The vast fluctuations, and unforeseen developments of commerce, or the fault or misfortune of some one or more connecting lines, may occasionally bring about a condition of affairs in which the best managed railroad, and with the most ample freight equipment, is unable to move at once as tendered all the freight upon its line, and this without any fault of its own.⁴⁷

¶ E. FURNISHING CARS TO SHIPPERS IN THE ORDER IN WHICH THEY APPLY.

A rule by which a carrier apportions cars in time of great scarcity by giving the first car to the first shipper ordering and the second to the next shipper ordering, may be entirely just.⁴⁸

On the other hand, however, where one shipper having a large quantity to ship, orders a large number of cars, while other shippers may have but an occasional carload, rigid adherence to such a rule might prove decidedly unjust.⁴⁹

¶ F. CIRCUMSTANCES UNDER WHICH CARRIERS WERE JUSTIFIED IN REFUSING CARS TO SHIPPERS FOR LOADING COAL FROM WAGONS.

During Shortage of Equipment and Pressure of Business.

In the case of *Thompson v. Pennsylvania Railroad Company*,⁵⁰ the Commission held: That the right of the complainant

⁴⁶ *United States v. N. & W. Ry. Co.* (1901), 109 Fed. Rep. 831; *Powhattan Coal & Coke Co. v. N. & W. Ry. Co. et al.*, 13 I. C. C. R. 69.

⁴⁷ See note 43, *supra*.

⁴⁸ *Richmond Elevator Co. v. P. M. Rd. Co.* (1905), 10 I. C. C. R. 629.

⁴⁹ *Ibid.*

⁵⁰ *Thompson v. Pennsylvania Rd. Co.* (1905), 10 I. C. C. R. 640.

to ship coal was not barred by the fact that he is a druggist by occupation, or that he loaded coal cars from wagons, for a large part of the commerce of the country is handled in that way; and when he tendered freight for transportation he was entitled to the same facilities furnished to other shippers under like conditions.

During the anthracite coal strike of 1902, which caused an extremely large demand for bituminous coal and great increase in the price of that coal, the complainant arranged for the purchase and sale of the surplus product of certain bituminous mines, called surface or country mines, and for hauling the coal by wagon to stations or sidings and loading upon the defendant's cars. Under normal conditions this could not be done at a profit. The defendant issued a rule limiting its coal cars to mines having track connection with its road, and this rule was kept in force during the strike period. The demand for coal throughout the strike resulted in the greatest tax upon the railroad equipment and in the congestion of lines, yards and terminals. The mines loading by tipple and by track connection received far less than their usual car supply. Under those and other attendant conditions, defendant's temporary rule, confining its comparatively few available cars to mines generally in operation, where quick loading could be accomplished, and declining to permit its siding or switches to be further congested by loading cars from wagons, not only by complainant, but many others temporarily engaged in the same pursuit, was calculated to hasten rather than retard the movement of coal for public use, and was not unreasonable or unjust.

On Newly Constructed Road.

At common law a common carrier has the power to make reasonable regulations governing the manner and form in which it will receive such articles or commodities as it professes to carry, and also to change or modify such regulations from time to time upon reasonable notice to the public. A railroad company having a newly constructed

line through a locality underlaid with coal, by permitting owners of mines to load cars with coal from wagons on its side tracks at two small stations for a number of months, did not give them a vested right to continue such manner of loading, nor lose its common-law right to change its regulations and refuse longer to receive coal for shipment in such manner when the tracks for loading cars in that manner would not only interfere with the operation of its trains, and cause it loss and inconvenience, but would also, by reason of the slowness of this method, result in serious loss and inconvenience to other shippers and the public by greatly reducing the quantity of coal which the road would handle and transport below what it might if loaded by the use of modern appliances, as was the case at all other shipping points on its line.⁵¹

A carrier which transports large quantities of coal is entitled to make regulations with respect to the manner of receiving and transporting it, so that it may be handled expeditiously, safely, and economically, without unnecessary interference with the carrier's other business; and regulations which are well designed to promote such object cannot be complained of on the ground that they operate to give a preference to one who complies with them, or as a discrimination against one who does not.⁵²

¶ G. SHIPPER CANNOT COMPLAIN OF A REASONABLE RULE OF CAR DISTRIBUTION.

A system of coal-car distribution which a railroad company has applied in a given field, if that system, under the circumstances and conditions peculiar to that field, be a reasonable one, and fair to all, and is applied to all alike, affords no just cause of complaint on the part of any shipper.⁵³

⁵¹ Harp v. C. O. & G. Rd. Co. (1903), 125 Fed. Rep. 445; 61 C. C. A. 405, affirming 118 Fed. Rep. 169.

⁵² Harp v. C. O. & G. Rd. Co., 125 Fed. 445, 61 C. C. A. 405, aff'g 118 Fed. 169.

⁵³ See note 46, *supra*.

¶ H. DISTRIBUTION OF PRIVATE CARS, SYSTEM-FUEL CARS AND FOREIGN RAILROAD CARS DURING CAR SHORTAGE.

A railroad company's duty to allot cars without unjust discrimination among coal shippers cannot be altered by the furnishing of special cars to the railroad company by one shipper to be used exclusively in the transportation of the coal of that shipper, whether the cars are sold by the shipper to the railroad company on the installment plan, or the shipper retains title to the cars. If the cars are purchased from the shipper by the railroad company on the installment plan, the company thereby becomes interested therein at once, and finally the absolute owner thereof, then, in the event of an exclusive application of the same to the business of that shipper, there never would be a time, from first to last, during which the railroad company, by such a course, would not be devoting rolling stock which it owns, or in which it is interested as a common carrier, to the demands of one shipper to the exclusion of others similarly situated, which it may not do; or, even if it should never become interested in, or the owner of, the cars, still it may not rent its tracks or permit them to be appropriated by any one to the detriment of other shippers whom it should serve to the uttermost; and in the stress of unusual business such special cars in its service would have to be applied to the accommodation of all shippers alike.⁵⁴

In case of *Railroad Commission of Ohio v. Hocking Valley Ry. Co.*,⁵⁵ the Commission held: That the total of the foreign railway fuel cars, the private cars, and the system cars should be taken into consideration in determining the distribution. If the number of foreign railway fuel cars or of private or leased cars is less than the percentage or proportion of the company to which such cars are consigned

⁵⁴ See note 46, *supra*.

⁵⁵ *Railroad Commission of Ohio et al. v. Hocking Valley Ry. Co. et al.* (1907), 12 I. C. C. R. 398, reaffirmed in *Rail & River Coal Co. v. B. & O. Rd. Co.* (1908), 14 I. C. C. R. 86, and *Hillsdale Coal & Coke Co. v. Pa. R. R. Co.* (1910), 19 I. C. C. R. 356.

or assigned, that company should be given all of the foreign railway fuel cars consigned to it and all of the private or leased cars belonging to it, and a sufficient number of system cars to make up its proportion. That on the other hand, if the number of foreign railway fuel cars consigned to it and of private cars assigned to it is greater than its proportion, all such cars so consigned or assigned to it should be delivered to it and the available system cars should be divided among the other operators on the basis of a changed percentage because of the limitation of the company or companies to which the foreign railway fuel cars and private cars have been consigned, assigned and delivered.

In case of *Traer v. Chicago & Alton Railroad Co. et al.*,⁵⁶ the Commission ordered the defendants to maintain and enforce a practice or regulation taking into consideration system cars, foreign railway fuel cars, leased or so-called private cars, and cars used for their own several fuel supplies in determining the distribution of coal among the various coal operators along their lines for, or as affecting, interstate shipments of coal; and if the number of foreign railway fuel cars, or leased or so-called private cars, or carrier's own fuel cars, or any or all of them, is less than the percentage or proportion of the mine to which such cars are consigned, leased, or assigned, then such mine must be given all the foreign railway fuel cars consigned to it, and all the cars owned or leased by it, and all the carrier's own fuel cars assigned to it, and a sufficient number of system cars to make its proportion; but if the number of foreign railway fuel cars consigned to it, and the leased or so-called private cars delivered to it, and the carrier's own fuel cars assigned to it, is greater than its proportion, all such cars so consigned or assigned to it, or leased by it, must be

⁵⁶ *Traer, Receiver, v. C. & A. Rd. Co. et al.* (1908), 13 I. C. C. R. 451; see *I. C. C. v. Ill. Cent. Rd. Co.* (1910), 215 U. S. 452; 54 L. Ed. —; 30 Sup. Ct. 155, reversing 173 Fed. Rep. 930, partially restraining order of the Commission; see also *I. C. C. v. C. & A. Rd. Co.* (1910), 215 U. S. 479, 30 Sup. Ct. 163; *Hillsdale Coal & Coke Co. v. Pa. R. R. Co.* (1910), 19 I. C. C. R. 356.

delivered to it, and the available system cars must be divided among the other said coal operators on the basis of a changed percentage, because of the limitation of the mine or mines to which the foreign railway fuel cars, carrier's own fuel cars, or so-called private cars have been assigned; that is, the lessee of certain of said so-called private cars, and the consignee of foreign railway fuel cars, and the one to whom carrier's own fuel cars are assigned, must be given full and exclusive use of them, but must not be given, in addition thereto a division of the system cars, except when its supply of the so-called private cars and of foreign railway fuel cars and of carrier's own fuel cars is less than its proportion of the total of available cars, including system cars, foreign railway fuel cars, carrier's own fuel cars, and so-called private cars.

Commerce, in the constitutional sense, includes the instrumentalities by which commerce is carried on, and extends to the coal cars owned by a railway company engaged in interstate commerce, in which it receives from the tipple of the coal mines along its line, coal purchased by it and used solely for its own fuel purpose.⁵⁷

The Supreme Court in *I. C. C. v. Ill. Cent. Rd. Co.*,⁵⁸ held that the fuel cars of an interstate carrier, in which it hauls fuel for its own use, are instruments of interstate commerce as fully as are its system cars in which commercial coal is hauled for shippers; and consequently "that such cars are embraced within the governmental power of regulation which extends, in time of car shortage, to compelling a just and equitable distribution and the prevention of an unjust and discriminatory one." It further held that requiring a railway company, in making its daily distribution of coal cars, in times of car shortage, to the bituminous coal mines on its line, to desist from its practice not to count the company's fuel cars against the share of the mine receiving them, cannot be said to destroy

⁵⁷ *I. C. C. v. Ill. Cent. Rd. Co.* (1910), 215 U. S. 452; 54 L. Ed. —; 30 Sup. Ct. 155, reversing 173 Fed. Rep. 930.

⁵⁸ *I. C. C. v. Ill. Cent. Rd. Co.* (1910), 215 U. S. 452; 54 L. Ed. —; 30 Sup. Ct. 155, rev'g 173 Fed. Rep. 930.

the freedom of contract, on the theory that any discriminations or preferences resulting from such practice arose from the fact that the railway company chose to purchase coal for its fuel supply from a particular mine or mines.

¶ I. RULES FOR RATING OF COAL MINES.

Under the provisions of Section 3 of the Interstate Commerce Law it is the legal duty of a railroad company, in furnishing cars to coal mines along its line, where a limited number only can be supplied, to distribute the same impartially, without unjust discrimination or favoritism; and such distribution should be based on a disinterested and intelligent examination by experts of the different mines, and upon a consideration of all the factors which go to make up their capacity, both actual and potential. This involves an examination of the working places, the switch and tipple efficiency, the number and character of the mining machines in use, the hauling system and the power used, the number of miners and other employés, the mine openings, and the miners' houses. In examining the working places, consideration should be given to the thickness of the seam and other conditions peculiar to the different coal fields.⁵⁹

The capacity of a coal mine for purposes of car distribution is the amount of coal it is able to place in the railroad cars in a given time; and this will depend on its working places, the thickness of its coal seams, its switches, workmen, mine cars, and tipple, its general equipment, and its management.⁶⁰

If, during an inspection of a mine for the purpose of reaching a basis for coal-car distribution among several mines, it should appear that the tipple had suffered injury, or had been destroyed, the presumption would be that it would be repaired or replaced immediately, and the mine should be rated as if the tipple were intact.⁶¹

⁵⁹ *United States, ex rel. Kingwood Coal Co., v. W. V. N. R. Co. et al.* (1903), 125 Fed. 252, affirmed in 134 Fed. 198; 67 C. C. A. 220.

⁶⁰ *Ibid.*

⁶¹ *U. S. ex rel. Kingwood Coal Co. v. W. V. N. R. Co.* (1903), 125 Fed. Rep. 252, *aff'd*, 134 Fed. 198, 67 C. C. A. 220.

The Commission has held,⁶² that in the matter of car distribution, where there is an inadequate supply of coal cars, the only regulation or practice in respect to the transportation of coal from the mines that is just, fair, and reasonable to be followed is to allow to each mine its fair and just proportion of the coal cars, estimated upon its justly ascertained capacity, and without regard to whether the mine furnishes partly fuel coal, and partly commercial coal, or commercial coal only.

That the carrier should publish, or post for convenient inspection, at frequent and regular intervals, the ratings of the various mines and the car tonnage received by them; in cases where commercial mines have received more or less than their equitable pro rata of the car tonnage within any particular period, the overplus or shortage for such mines should be adjusted, as far as possible, within the period next succeeding, and such correction should be shown in the subsequent reports. That the carrier must be free to contract for the total output of a mine, if it so desires, or it may contract for any part thereof less than the whole; and it is entitled to get its fuel first. If, however, a mine contracts to furnish only a part of its output to the carrier for fuel, and if the filling of its contract with the carrier calls for its full pro rata of cars, or more, then it should receive no other cars for commercial shipments. If such a mine in filling its contracts to supply fuel coal cars does not exhaust its equitable pro rata of cars, then cars should be given it for commercial shipments sufficient to complete its full pro rata share of all available cars. That the occupation, the user, and the subsequent reduction of available equipment of the carrier are the vital matters in all plans of car distribution in the time of shortage.

The method of rating mines now substantially followed by coal-carrying roads involves two principal factors, (a) the physical capacity of the mine and (b) its commercial capac-

⁶² Royal Coal & Coke Co. et al. v. Southern Ry. Co., 13 I. C. C. R. 441.

ity.^{62a} The physical capacity is determined by the thickness of the coal seam, the number of rooms or working places, the capacity of the underground tram tracks, and the facilities for getting the coal out of the mine into the tippie, and from the tippie into the cars. A fixed per diem value is assigned to a man's labor, taking into consideration the character of the seam upon which the work is to be done; and the number of places in which a man can work is taken into account regardless of the number of men actually employed. This in substance is the method generally adopted in arriving at the physical capacity of mines.^{62b} The commercial capacity, or the requirement of a mine for cars as tested by its actual shipments, is arrived at by taking the volume of the shipments made by a mine during a period of free-car supply, usually of four months and generally from April 1 to August 1, in each of the two preceding years. The three figures, expressed in coal tons, namely, the physical capacity, the commercial capacity for the first year, and the commercial capacity for the second year, are added together and the sum is divided by three. The result is the capacity basis that is established by the carrier for determining the percentage of the available coal equipment that the particular mine is entitled to receive during any period of car shortage. A method of rating coal mines based upon a combination of their physical and commercial capacities more closely approximates their actual car requirements than a system based upon physical capacity only.^{62c}

“Speaking in precise terms, it is of no real concern to a carrier how large a particular mine may be and what are its possibilities in the way of daily output, except as those factors may afford some measure of what its actual shipments will be. The utmost obligation that the law lays upon the carrier is to equip itself with sufficient cars, not to meet the hopes and expectations of the owner of a mine as expressed in its physical

^{62a} *Hillsdale Coal & Coke Co. v. Pa. R. R. Co.* (1910), 19 I. C. C. R. 356.

^{62b} *Rail & River Coal Co. v. B. & O. R. R. Co.* (1908), 14 I. C. C. R. 86.

^{62c} See note 62a, *supra*.

development, but to meet his actual shipments. A mine rating that is adjusted to the expectations of the operator and altogether ignores his actual requirements might easily result, in a period of car shortage, in giving him cars for every ton of coal that he can actually dispose of, while an adjoining mine, with a small development but a larger demand for its output, would get but a fraction of the equipment that it needs to meet its actual contracts.^{62d}

¶ J. CARRIERS NOT REQUIRED BY THE ACT TO REGULATE COMMERCE TO ESTABLISH A SYSTEM OF MINE RATINGS.

The law requires railroads, in the distribution of their equipment, not to discriminate between different shippers, and it is undoubtedly the duty of the Commission to see that such rules and regulations are adopted as will prevent that form of discrimination. There is, however, no requirement of the Act to Regulate Commerce that a railroad company shall establish a system of mine ratings and car distribution unless that is necessary to prevent discrimination among the different patrons of its line; and the Commission is not called upon to make an order for the establishment of such a system until it fairly appears that without it discrimination will result which can be prevented by the order.⁶³

The Act to Regulate Commerce leaves carriers free to initiate their own rates, rules, and regulations. The Commission should only interfere when that becomes clearly necessary to prevent some wrong forbidden by the Act.⁶⁴

§ 166. Carrier bound by Acts and Representations of its Agents.

A carrier is bound by what its agent says and does in the business of furnishing cars.⁶⁵ If he misrepresents the officers of the company, the fact can in no wise affect the rights of a complainant.⁶⁶

^{62d} See note 62a, *supra*.

⁶³ *Traer, Receiver, v. C. B. & Q. R. R. Co.* (1908), 14 I. C. C. R. 165.

⁶⁴ *Ibid.*

⁶⁵ *Gallopy & Firestone v. C. H. & D. R. R. Co.* (1905), 11 I. C. C. R. 1.

⁶⁶ *Ibid.*

Where a railroad having permitted the erection of grain elevators along its right of way for the storage of grain by producers and other owners, pending shipment, promulgated a rule requiring all orders for cars to be used in the shipment of grain from such warehouses to come through the warehouseman, the warehouseman in ordering cars for a storer of grain pursuant to such rule is the agent of the railroad company for that purpose, and not the agent of the storer, so that the railroad company is liable for the warehousemen's negligent or unlawful performance of such duty.⁶⁷

§ 167. Refusal of Shipper to accept Cars until Claim for Alleged Damage is paid.

A shipper has no right to demand a settlement of a claim for damages as a condition precedent to the acceptance of cars tendered to them in the regular course of business.⁶⁸

§ 168. Interchange of Cars between Connecting Carriers.

See *Chapter 35, post*.

§ 169. Discrimination in the Distribution of Cars.

See *Section 369, post*.

§ 170. Carriers must send Cars through, or transfer Shipments en route.

Where connecting lines have united in publishing a joint through rate between two points it is the sense of the Commission that it is the duty of the carriers in the route to provide the car and permit it to go through to destination or to transfer the property en route to another car at their own expense.⁶⁹

⁶⁷ United States ex rel. Northwestern Warehouse Co. v. O. R. & Nav. Co. (1908), 159 Fed. Rep. 975.

⁶⁸ See note 65, *supra*.

⁶⁹ Rule 59, Con. Rul. Bul. 4 (April 7, 1908).

§ 171. Return of Cars to Owner.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*), after providing for the establishment and operation of through routes, provides that carriers shall make reasonable rules and regulations for the return of cars used in such through routes and to provide for reasonable compensation to those entitled thereto.

§ 172. Jurisdiction of the Interstate Commerce Commission.

¶ A. JURISDICTION OF COMMISSION OVER DISTRIBUTION OF CARS IN GENERAL.

In the case of *Rail & River Coal Co. v. B. & O. Ry. Co.*,⁷⁰ (decided in 1908), in which the distribution of cars was involved, the defendant raised the jurisdictional question by pleading that such matters are not within the scope of the regulative authority of the Commission. The Commission in passing upon this question by Harlan, Commissioner, said:

"The point arises upon the first paragraph of Section 15 of the amended Act to Regulate Commerce. Stripping the clause of unnecessary words and eliminating from it all matter not essential to this inquiry, the language upon which the argument of the defendant is based will stand out more clearly and the question will more readily be apprehended. The clause will then read as follows:

"That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made * * * it shall be of the opinion that any of the rates * * * demanded * * * by any common carrier * * * for the transportation of persons or property * * * or that any regulations or practices whatever of such carrier or carriers affecting such rates, are unjust or unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this act, to determine and prescribe what will be the just and reasonable

⁷⁰ *Rail & River Coal Co. v. B. & O. Rd. Co.* (1908), 14 I. C. C. R. 86; affirmed in *I. C. C. v. Ill. Cent. Rd. Co.* (1909), 215 U. S. 452; 54 L. Ed. —; 30 Sup. Ct. 155, in which the Supreme Court held that the authority to regulate the distribution of a railway company's fuel cars in times of car shortage was delegated to the Commission by the Act as a means of prohibiting the unjust preferences or undue discriminations forbidden by Section 3 of the Statute.

rate * * * thereafter * * * to be charged; and *what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed*; and to make an order that the carrier shall cease and desist from such violation * * * and shall conform to the regulation or practice so prescribed.

“The contention of the defendant is that its regulations and practices with respect to the distribution of coal cars among the various mines on its lines are not regulations or practices ‘affecting rates,’ and it therefore denies the authority of the Commission to intervene between it and its coal shippers with a view of controlling and reforming the manner in which the distribution is made. Its counsel says:

“The law confers no power to make any order with reference to any regulation or practice of the carrier not affecting rates. Regulations as to car distribution do not affect rates, and the Commission has, therefore, no power to prescribe what regulation or practice shall be followed with regard thereto.

“The point is not altogether a new one. It has been pleaded in other cases although not seriously insisted upon in argument. But in this proceeding it is earnestly urged upon our attention by the defendant as decisive of the controversy and of the right of the Commission to enter an order. The question is one of very large importance. If the numerous and varied regulations and practices of carriers which enter so vitally into questions of transportation do not ‘affect rates,’ in the sense attributed by counsel for the defendant to that phrase, and therefore lie outside the jurisdiction of the Commission, our power to protect the shipping public against abuses is much less extensive than has generally been understood. There is no more insidious or effective way by which a carrier may discriminate between its shippers than through a regulation or practice that denies to them the equal enjoyment of its facilities. And if the rules of carriers with respect to car distribution are not included within the scope of the law, the prosperity of shippers, during periods of car shortage, largely lies in the hands of the carriers on whose lines they conduct their business enterprises, whenever such carriers are

disposed to and do actually favor some shippers at the expense of others. By giving to one manufacturer a larger proportion of cars than he is entitled to, when the volume of his traffic is compared with that of a competitor, his business may be encouraged and built up, while the business of the competitor may be destroyed, if the Commission has no authority to intervene on his behalf. That there is need of such authority will appear from an examination of the published reports of proceedings in which the Commission has found just occasion to exercise it.

“The power upon complaint made to deal with unjust, preferential, and discriminatory regulations and practices of carriers was clearly vested in the Commission under Section 15 of the Act as it stood prior to the amendatory Act of June 29, 1906. Whether or not it still exists under Section 15 of the amended Act must be ascertained by examining the whole Act as it now stands with a view to gathering the general intent and purpose of the enactment, and then by examining the various provisions by which the intent and purpose are sought to be made effective. The underlying purpose of this legislation, as will doubtless be agreed, was to put shippers on a basis of absolute equality; to assure to them not only equal rates but an impartial enjoyment of the facilities and services of interstate carriers. That principle appears throughout the Act, but nowhere more clearly than in Sections 2 and 3. The former assures to shippers an equality of rates for the transportation of property under substantially similar circumstances and conditions; and the latter assures to them an equality in the opportunity to use the rates, facilities, and services of carriers. One right supplements the other. An equality in rates without an equal opportunity to use the facilities of carriers would fall far short of the general objects sought to be accomplished by the Congress. On the other hand, the right to impartial treatment by carriers in the transportation of their merchandise would mean little to shippers if not accompanied by an assurance of an equality also in rates. And when we approach the consideration of any

special provision in the Act, this understanding of its general scope and purpose must not be lost sight of. As was said by Chief Justice Marshall in *The Duroisseau v. United States*,⁷¹

“The spirit as well as the letter of a statute must be respected, and where the whole context of the law demonstrates a particular intent in the legislature to effect a certain object, some degree of implication may be called in to aid that intent.

“But, while keeping in mind the general intent and spirit of the Act, we are by no means to be understood as indicating that our power to deal with undue preferences and unlawful discriminations, when accomplished by carriers through unjust regulations and practices, rests upon implication; or that it is necessary by implication to inject into Section 15 explanatory words that are not embraced within its text. The language of that provision is entirely sufficient in itself to enable the Commission to redress wrongs of the character complained of in this proceeding. In reaching this conclusion we are not required to resort to ingenuity in construction or to rest the argument upon a mere matter of punctuation as suggested by counsel. In our view any practice or regulation that unlawfully discriminates against one shipper and affords an undue preference to another shipper is a regulation or practice affecting rates within the meaning of that phrase as used in the clause in question. Any regulation or practice that withdraws from a shipper the equal opportunity of using and taking advantage of the rates offered by a carrier to the public is clearly a regulation or practice affecting rates in the sense in which that phrase is used in the amended Act at the point in question. To hold otherwise, as the defendant urges, would be to put the narrowest possible construction upon those words, in disregard of the general objects and purposes of the enactment. And this we are not warranted in doing under any recognized rule of statutory construction, and more especially when a remedial statute is under considera-

⁷¹ *The Duroisseau v. United States* (1810), 6 Cranch (U. S.), 307, 314, 3 L. ed. 232.

tion. After having vested in the Commission the power to redress wrongs arising out of unreasonable and unjust rates, we are not ready to accept the view that the Congress has contented itself with a mere admonition in the law against the great wrongs that may be done against shippers through unjust regulations and practices. That, as counsel contends, is exactly what has happened. Although Congress has declared such practices to be unlawful, counsel insists that it has omitted to give us the power to correct them.

“Setting aside as beyond the reach of the Commission the great body of rules, regulations and practices of carriers that have to do with transportation, he says:

“Examples of regulations affecting rates are those fixing maximum carload weights, and that contained in the fourth clause of the uniform bill of lading which provides that all property transported shall be subject to necessary cooerage and baling at the owner's cost.

“The maximum or minimum weight of a carload is not something affecting the rate, but is in fact a part of the rate, a factor which is just as essential to correct statement of the rate as is the rate per 100 pounds itself. Nor do cooerage and baling affect the rate as such. They are simply special services performed by the carrier in transit when it is necessary to protect the shipment from damage or loss. Such services neither increase nor diminish the rate, but are charges entirely apart from the rate. While no other examples of rules or practices affecting rates are vouchsafed us by counsel to illustrate his conception of the meaning of that phrase, apparently he construes it as referring to rules or practices which in some way increase or diminish the amount of freight charges that the shipper must pay on a shipment.

“The text itself does not justify that construction of the provision in question. It will be observed that the clause divides itself naturally into two parts; it authorizes the Commission, first, to consider the wrongs alleged, and then to apply the remedy. If it shall be of the opinion after a full hearing that the regulation or practice complained of is unreasonable and unjust, the Commission may remedy the

wrong by prescribing a just and reasonable regulation or practice thereafter to be followed by the carrier. In the first part of the provision reference is made to regulations or practices 'affecting rates'; the remedy offered by the provision consists in the prescribing by the Commission of a just and reasonable regulation or practice with respect to 'transportation.' While there is here some contradiction in the words used, we do not understand that there is any contradiction in the real substance of the clause or in its meaning. Each part of the clause has a necessary relation to the other part, and the words 'regulations' and 'practices' as used in both parts must necessarily be used in the same sense. If they are not so used it is difficult to see how a wrongful regulation or practice 'affecting rates,' in the sense of affecting the amount of the freight charges on a shipment, could ordinarily be cured by the substitution, as the clause now under consideration provides, of a just and a reasonable regulation or practice in respect to 'transportation.' Obviously the two phrases refer to the same kind of regulations and practices, namely, the regulations and practices under which the transportation of interstate carriers is conducted. When both phrases are considered together and the whole clause is read in the light of the great purposes underlying the act, there is little difficulty in reaching the conclusion that the words 'any regulations or practices whatsoever * * * affecting such rates' are used synonymously with the words 'regulation or practice in respect to such transportation'; and that both clauses are to be read in the widest possible sense and embrace all regulations and practices of carriers under which they offer their services to the shipping public and conduct their transportation. We find no difficulty in holding, under section 15 of the amended act, that ample authority is vested in the Commission to deal with the undue preferences and unlawful discriminations, forbidden under sections 2 and 3 and elsewhere in the act, regardless of the form of the rule, regulation or practice under which such wrongs may be perpetuated."

However, the clause of section 15 of the Act, as above considered, was changed by the Mann-Elkins Bill of June 18, 1910, and now reads as follows:

That whenever, after full hearing upon a complaint made * * * or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of the opinion * * * that any individual or joint * * * *regulations or practices whatsoever* of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe * * * *what individual or joint * * * regulation or practice is just, fair and reasonable, to be thereafter followed*; and to make an order that the carrier or carriers shall cease and desist from such violation * * * and shall conform to and observe the regulation or practice so prescribed.

The words "*regulations or practices whatsoever*," as substituted in the late amendment to the Act to Regulate Commerce supply the deficiency which existed in the old law, as will be seen from the preceding argument of the Commission, wherein they construed the words, "any regulations or practices whatsoever * * * affecting such rates," to have been used synonymously with the words, "regulation or practice in respect to such transportation," and thus confer upon the Commission by statute jurisdiction which it heretofore exercised by seeming implication.

The new statute eliminates any question as to the power of the Commission to correct any unjust discrimination or undue or unreasonable preference or advantage as prohibited in sections 2 and 3 of the Act which result from such regulations or practices.

¶ B. PRIMARY JURISDICTION OF COMMISSION OVER REGULATIONS OF RAILROADS IN DISTRIBUTION OF CARS.

In case of *Baltimore & Ohio Rd. Co. et al. v. United States*,⁷²

⁷² *Baltimore & Ohio Rd. Co. et al. v. United States ex rel. Pitcairn Coal Co. et al.* (1909), 215 U. S. 164, 30 Sup. Ct. 86, 54 L. ed. —, following *T. & P. Ry. Co. v. Abilene Cotton Oil Co.* (1907), 204 U. S. 426; 51 L. ed. 553; 27 Sup. Ct. 350 and reversing *U. S. ex rel. Pitcairn Coal Co. v. Baltimore & O. R. Co. et al.* (1908), 165 Fed. Rep. 113; 91 C. C. A. 147 and 154 Fed. 108.

the Supreme Court of the United States held that the grievances produced by a railway company in the distribution of coal cars in times of car shortage to the bituminous coal mines served by it, which are alleged to violate the provisions of the Act to Regulate Commerce prohibiting unjust preferences or undue discriminations, cannot be redressed, in advance of the action of the Interstate Commerce Commission, by mandamus to prohibit the acts complained of and prescribe a rule or regulation for the future, since the provisions of section 10 of the Act, authorizing mandamus to compel the furnishing of cars and other facilities for transportation, must be limited either to the performance of duties which are so plain and so independent of previous administrative action of the Commission as not to require a prerequisite exertion of power by that body, or to compelling the performance of duties which plainly arise from the obligatory force which the statute attaches to the orders of the Commission, rendered within the lawful scope of its authority, until set aside by the Commission or enjoined by the courts.

¶ C. COMMISSION NO AUTHORITY TO ORDER ESTABLISHMENT OF
SYSTEM OF MINE RATINGS.

The Commission has no authority to order a railroad company to establish a system of mine ratings until it fairly appears that without it discrimination will result which can be prevented by the order.⁷³ The Commission should only interfere when that becomes clearly necessary to prevent some wrong forbidden by the Act.⁷⁴

¶ D. COMMISSION NO AUTHORITY TO COMPEL CARRIERS TO
FURNISH PARTICULAR KIND OF EQUIPMENT.

The statute nowhere clothes the Interstate Commerce Commission with power to determine what kind of cars the carrier should use in the conduct of its business and to require a carrier to place upon its line for use such kind and num-

⁷³ See note 63, *supra*.

⁷⁴ *Ibid*.

ber of such cars as the Commission may decide will constitute a proper and necessary equipment of car service. The duty of every carrier is none the less obligatory at common law and by its charter, than to furnish an adequate and proper equipment for all the business it undertakes and advertises in its tariffs it will do. The statute does not undertake to clothe the Interstate Commerce Commission with the power by summary proceeding of compelling a railroad company to perform all its common-law duties, but leave many of these to be enforced in the courts by suits for damages and by other proceedings.⁷⁵ This is apparent from the twenty-second section of the statute, in which it is declared that "nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by any statute, but the provisions of this Act are in addition to such remedies."⁷⁶

¶ E. COMMISSION NO JURISDICTION OVER DELAY IN FURNISHING CARS.

While the Act to Regulate Commerce contains no provisions which expressly or by proper implication give the Commission jurisdiction in cases merely showing delay or negligence in the receipt, forwarding or delivery of property offered for transportation, including the furnishing of cars, the regulating statute does prohibit any unjust discrimination or wrongful prejudice in the provision of cars and other transportation facilities.⁷⁷

¶ F. COMMISSION NO JURISDICTION OVER CAR SHORTAGE.

The Interstate Commerce Commission is without authority under any existing law to deal effectively with the question of car shortage. Broadly speaking, the regulating power of Congress has not been exercised to control the physical

⁷⁵ Scofield et al. v. L. S. & M. S. Ry. Co. (1888), 2 I. C. C. R. 90; 2 I. C. R. 67, reaffirmed in Rice v. C. W. & B. Rd. Co. et al. (1892), 5 I. C. C. R. 193; 3 I. C. R. 841.

⁷⁶ Ibid.

⁷⁷ See note 48, supra.

operations of interstate railroads, aside from the safety appliance requirements, either as respects the movement of trains or the supply of equipment. It is true that the recent amendments include a very broad definition of "transportation" and impose in general the obligation to provide all needful facilities, but this is perhaps not much more than a statement of common law obligations which already existed. Certainly no machinery has been provided to give effect to the mandate of the statute in this regard, and the Commission can apparently make no order, even after complaint and hearing, which will afford substantial relief. Undoubtedly the Commission could deal with a proven case of discrimination between shippers in the distribution of cars, but that is not the characteristic feature of the situation where there is shortage of equipment. The complaints that come to the Commission arising out of car shortage are not based upon charges of favoritism, but indicate rather a prevailing condition in which that element is not conspicuous.

It may be also that the Commission could in particular instances, after full hearing, award reparation for damages resulting from failure to supply cars, but this is a matter of at least considerable doubt and at best a remedy of little practical value. An award of damages in such a proceeding would not be made by an order binding upon the carriers and enforceable by cumulating penalties, but merely a *prima facie* case in a suit brought in the Federal Courts to recover the sum awarded. Since a proceeding which involves no question of reasonable rates but only the amount of damages for past transactions must be followed by suit to recover the ascertained loss, it would seem quite as suitable and probably more effective to bring the suit in the courts in the first instance.⁷⁸

§ 173. State Regulation of Carrier's Duty to furnish Cars.

When applied to interstate shipments, the provisions of a State statute which penalizes the failure of a railroad com-

⁷⁸ See note 18, *supra*.

pany to furnish cars to a shipper within a certain number of days after the latter's requisition in writing in the sum of \$25 per day for each car not so furnished, and admits of no excuse, except such as arise from "strikes or other public calamity," is an unconstitutional regulation of interstate commerce.⁷⁹

§ 174. Causes of Car Shortage.

During the investigation of the Interstate Commerce Commission of the shortage of cars and other insufficient transportation facilities in the northwest, on the Pacific coast, and in the southwest in December, 1906, the roads testified that they were not so much unable to furnish cars and locomotives as they were unable to handle the volume of traffic which was offered them. In other words their lines were so badly congested that they could not dispatch the traffic. It was developed that the congestion of traffic arises not at points of origin, but either at points of destination or at the terminals where freight is transferred from one line to another. This congestion has its effect upon all lines of railroad reaching such terminals, for once a terminal contains more traffic than it can promptly handle and deliver, it acts as a dam which floods a constantly increasing area behind it.⁸⁰

It was shown that one of the causes of congestion at terminals was the reconsignment privilege granted on many of the principal articles of freight.⁸¹ This service is of value to shippers, but it is manifestly unjust that the consignee at the terminals should be unable promptly to receive his freight because traffic that is destined elsewhere encumbers yards and tracks.⁸² This was shown to be not an insignificant cause for the slow movement of freight and shortage

⁷⁹ *Houston & T. C. Ry. Co. v. Mayes* (1906), 201 U. S. 321; 50 L. ed. 772; 26 Sup. Ct. Rep. 492, reversing 36 Tex. Civ. App. 606, 83 S. W. 53; see *St. L. S. W. Ry. Co. v. Arkansas* (1910), 217 U. S. 136, 54 L. ed., —, 30 Sup. Ct. 476.

⁸⁰ See note 1, *supra*.

⁸¹ *Ibid*.

⁸² *Ibid*.

in car service.⁸³ It was also shown that the railroads, from lack of facilities, warehouses, platforms, and the like, were compelled to make far too extensive use of the cars for storage purposes. The investigation under consideration showed that in one port terminal a daily average of 10,000 cars were so held during several months of the car shortage period of 1906.⁸⁴ It was shown that a considerable part of the shortage of car service was due to excessive and unnecessary time allowed by the railroads to shippers.⁸⁵

Among other evidence introduced at the hearing, credible witnesses testified of cars standing from two to twenty days at the points of origin, owing to the congestion of the tracks; of empty cars lost in congested terminals or lying unused, sometimes in solid trains, for equal lengths of time; of engines broken down from overwork; of trains torn in two by heavy loads; and of train crews working extremely long hours without rest although making only ordinary mileage.⁸⁶ It was shown also that car shortage may result as much from lack of wise methods in handling the cars which a company possesses as from a deficiency in the number of cars or a lack of tractive power. If engines are made to haul their maximum, it is manifest that their capacity is limited to the highest grade over which they are compelled to pass. If trains are made up of so large a number of loaded cars that the engine is reduced to its minimum speed, these cars during their time of transit are withdrawn from the general car supply.⁸⁷

§ 175. Relation between a Shortage of Cars and an Insufficiency in Other Facilities.

In the case of *Rail & River Coal Co. v. B. & O. R. R. Co.*,⁸⁸ the Commission in considering the shortage of coal cars

⁸³ See note 1, *supra*.

⁸⁴ *Ibid*.

⁸⁵ See note 1, *supra*.

⁸⁶ *Ibid*.

⁸⁷ *Ibid*.

⁸⁸ *Rail & River Coal Co. v. B. & O. R. R. Co.*, 14 I. C. C. R. 86.

stated that in proceedings of this nature too little stress is laid upon the very obvious relation between a shortage in cars and an insufficiency in motive power, in sidings, in tracks, in train crews, and other facilities necessary to the movement of traffic. A shortage of cars on a particular line does not mean that the supply of cars of that carrier has been diminished in number, but only that the volume of traffic offered exceeds the capacity of its available equipment to move it. A shortage in cars usually, if not invariably, is accompanied by a shortage in some one or more of the other facilities of the carrier. When it has not enough cars, it usually has not enough locomotives and other facilities to meet the demands of the shippers.

This element in a shortage situation must not be overlooked by litigants who complain of the methods of carriers in the distribution of their equipment. Its importance is very clear. The mere ownership of a private car gives to the owner no superior right to use the facilities of the carrier in transporting it; it gives to him no right to have his private cars attached to a locomotive in preference to a system loaded by another shipper. The ownership of a private car or the possession of a foreign railway car can give to a shipper no preferred right to have it occupy a carrier's sidings or other tracks as against a system car loaded by another shipper, or to have it handled by a train crew in preference to a system car. When any of these general facilities are insufficient to move all the traffic offered, no shipper has a superior right over another merely because he enjoys the advantage of owning private cars or has contracts with connecting lines. And this shortage in other facilities which, as heretofore stated, rarely if ever, fails to accompany a shortage in cars, has an important bearing upon the matter of the distribution of cars.

§ 176. Proposed Remedies for Car Shortage.

¶ A. IN GENERAL.

In the investigation of car shortage considered under a pre-

vious section⁸⁹ the following remedies for car shortage were proposed:

That the privilege of reconsignment be restricted by the imposition of a reasonable reconsignment charge or by limiting drastically the time allowed on reconsignment. The provision for separate terminals outside cities at which freight is held pending determination by the shipper at destination. Proposed car clearing house—but its efficiency it was agreed must depend upon the agreement and cooperation of the railroads. An increase of per diem charges to stimulate the prompt return of cars from connecting lines. Strict enforcement of car-service rules as to loading and unloading cars and limitation upon the free time allowed. Legislation to govern the interchange of cars and penalizing the confiscation by carriers of foreign equipment. Reciprocal car-demurrage law, which is treated of in the following paragraph.

¶ B. RECIPROCAL CAR-DEMURRAGE LAW AS A REMEDY FOR CAR SHORTAGE.

In the investigation of car shortage, heretofore considered,⁹⁰ the Commission said:

“The most generally advocated remedy for the failure on the part of carriers to furnish cars when demanded is that now generally known as ‘reciprocal car-demurrage.’ This phrase means, in a word, that carriers shall be penalized upon failure to furnish cars demanded, and the phrase arises out of the universal railroad practice of imposing a per diem penalty when a car is held for unloading beyond a certain fixed number of days.

“‘It is but equitable,’ the shipper urges, ‘that if the railroad may charge me for holding its car because that car is needed by it in the conduct of its business that I should be permitted to charge it a stated sum per day when it fails to deliver to me a car which is necessary to the conduct of my business.’

“The carrier disavows any intention to profit by the delay

⁸⁹ See note 1, *supra*.

⁹⁰ See note 1, *supra*.

of the consignee in unloading his freight, but justifies its demurrage rule upon the ground that only by such charge can the consignee be led promptly to free equipment. The shipper in turn urges that such reciprocal demurrage as might be exacted would not compensate for the loss of the car at the time needed, but is intended rather to stimulate the railroad into more promptly providing the car which it is its legal duty to furnish.

"Some commercial bodies, advocating this general principle, favor the enactment of a law by Congress dealing directly with the subject, while others favor an enlargement of the powers of the Interstate Commerce Commission under which that body shall have authority to make proper and necessary rules, which may be enforced through the courts under penal provisions similar to those now incorporated in the Act to Regulate Interstate Commerce. Each method of procedure has been followed in the legislation of the States. The statute of Texas is an illustration of one method, and the rules framed by the commissions of Louisiana, Florida, Mississippi, North Carolina and Virginia are illustrations of the other.

"It is evident and beyond all controversy that the difficulties with which the business of transportation is affected in this country at the present time would not be overcome by the enactment of a reciprocal demurrage bill alone if such measure merely provided for punishing the railroad for nonplacing of cars or nonmovement thereof. The problem is one much deeper and much broader than a mere lack of cars and engines. No doubt an inadequate supply of these facilities is the cause of all the troubles which beset the shipping public on certain lines. But these instances are few. The problem of car shortage is one in which is involved every factor in railroading—the construction, the operation, the maintenance and the financing of the railroads. The inability of the shipper to secure a car may be but a symptom of a deep-seated and organic trouble.

"The real cause of a car shortage may lie in the too conservative character of the management of the road or in

the unfitness and the incompetency of its operating officials. It may flow from an incomprehension on the part of the directors of the full duty imposed by law upon a common carrier. It may arise out of a policy in railroad operation which gives primary consideration to speculative stock operations. It may come from an inability to secure funds to so fit itself that it can discharge its duty. It may follow in a time of exceptional prosperity from an increase in traffic which could not reasonably have been anticipated. Or it may result from an inability to secure labor and materials necessary to the proper enlarging of the railroad's facilities. This enumeration of causes is not exhaustive. It could not well be complete without giving consideration to many industrial and economic factors which at first glance would appear remote and unrelated. Clearly the problem of transportation is so closely interwoven with the fabric of our commercial system, and so closely related and so interdependent are the various activities of our industrial life that one may not lightly say what are the multitudinous considerations which necessarily enter into so simple a question as the reason why a railroad car is not at once forthcoming when ordered.

. "The enactment of a reciprocal demurrage bill will not build railroad track, equipment, enlarge and simplify terminals, nor transform incompetent operating officials into first-class railroad men, but it might stimulate, energize, and in some cases revolutionize the methods of delinquent railroads so that they would render the service which they were created to render. This is the theory of reciprocal demurrage. But that of itself it will enable the railroads to render adequate service is not demonstrated by experience.

"Perhaps the most serious congestion that exists at any terminal in the United States today is to be found in Galveston—in a State suffering seriously from car shortage, but in which there is on the statute books one of the simplest reciprocal demurrage laws to be found in the United States. In a statement by Hon. O. B. Colquitt, of the railroad commission of Texas, is found this pregnant passage:

“ ‘We have a law in Texas which provides that shippers may make statutory requisition for cars, depositing one-fourth of the freight charge from point of origin of the freight to its destination, and when such requisition is made the car must be furnished within a specified time or else the railroad company must pay to the party making the requisition demurrage at the rate of \$25 per day. This demurrage is reciprocal, and where the shipper or the consignee does not unload such cars within forty-eight hours after same is delivered demurrage at the rate of \$25 a day runs against the consignee.

“ ‘Our court of civil appeals in suits brought by individuals for damages has held that under this law the railroad company cannot be compelled to furnish cars for loading where the destination of shipment is beyond the line of the originating road. Acting under this construction of the law the Texas railroads are refusing to furnish cars to be loaded when the destination of the shipment is beyond their line. When shipments are accepted, the cars are held at junction points where the originating line requires loads to be transferred or their connecting line to furnish them with an empty car for every loaded car so tendered at such junction points. The result is that at junction points there are many cars tied up with loads waiting for transfer or exchange of an empty car.

“ ‘The great quantity of commerce going to the port of Galveston from the interior of Texas, as well as from Oklahoma, Kansas and Nebraska, much of which is originated on railroads that terminate in the interior and have to depend on their connections reaching Galveston to make port delivery, and the originating lines refuse to let their loaded cars go to port destinations, this forcing the unloading of such cars at interior junction points, first produced a blockade of cars at such points, and so tied up several thousand cars on side tracks in enforced idleness beyond the length of time which it would have required such cars to be transported to destination and returned.’

“ ‘This congestion at junction points soon extended to Gal-

veston, where it was aided greatly by a new policy which the Texas roads had adopted of shipping cotton to the port in mixed consignments, thus necessitating the unloading and sorting of such shipments before delivery could be made.

“Manifestly it is of little value to a shipper to be given a car if that car, when loaded, is not moved promptly to destination. Therefore, the conclusion is inevitable that reciprocal demurrage alone will not insure better railroad service when the movement is over more than one system of railroad. Such a law or rule must be supplemented by some other rule or law under which the originating carrier may be insured of prompt return of the cars which it delivers to its connections.

“The traffic of this country cannot be moved in the fashion which obtained in the early days of railroading, when transfers were universal at junction points. When the railroad is penalized for not placing a car at a shipper’s warehouse or elevator it will protect itself against the loss of that car by refusal to permit it to pass beyond its control unless it can be given another car in its stead, or unless some system is devised similar to that under the car pool under which its needs for cars may be promptly met.

“It will profit those who are seeking to remedy the shortage in car service by means of reciprocal demurrage to consider well the decision of the United States Supreme Court in *Houston & Texas Central Railroad Company v. Mayes*.⁹¹ This case involved the applicability of the Texas law to interstate commerce. Mr. Justice Brown, in delivering the opinion of the court, said:

“While there is much to be said in favor of laws compelling railroads to furnish adequate facilities for the transportation of both freight and passengers and to regulate the general subject of speed, length and frequency of stops, for the heating, lighting and ventilation of passenger cars, the furnishing of food and water to cattle and other live-

⁹¹ *Houston & Texas Central Railroad Company v. Mayes* (1906), 201 U. S. 321; 50 L. ed. 772; 26 Sup. Ct. 491, reversing 36 Tex. Civ. App. 606, 83 S. W. 53.

stock, we think an absolute requirement that a railroad shall furnish a certain number of cars at a specified day, regardless of every other consideration except strikes and other public calamities transcends the police power of the State, and amounts to a burden upon interstate commerce. It makes no exceptions in cases of a sudden congestion of traffic, an actual inability to furnish cars by reason of their temporary and unavoidable detention in other states, or in other places within the same state. It makes no allowance for interference of traffic occasioned by wreck or other accidents upon the same or other roads, involving a detention of traffic, the breaking of bridges, accidental fires, washouts, or other unavoidable consequence of heavy weather. * * * While railroad companies may be bound to furnish sufficient cars for their usual and ordinary traffic, cases will inevitably arise where by reason of an unexpected turn in the market, a great public gathering, or an unforeseen rush of travel, a pressure upon the roads for transportation facilities may arise which good management and a desire to fulfill all its legal requirements cannot provide for and against which the statute in question makes no allowance.

“Although it may be admitted that the statute is not far from the line of proper police regulation, we think that sufficient allowance is not made for the practical difficulties in the administration of the law and that, as applied to interstate commerce, it transcends the legitimate powers of the legislature.’

“There is nothing in this decision which justifies the conclusion that a reciprocal demurrage bill or rule governing interstate commerce cannot be so drawn as to come within the ruling of the court and the principles declared in the principles of the learned justice. Clearly, however, in justice to the carriers and in conservation of all the industrial interests of the country which use the railroads, whatever plan may be adopted to penalize the railroads for the non-furnishing of cars must be supplemented by some provision of law or plan of cooperation by which the railroads may be secure in permitting cars to pass to the tracks of con-

necting lines. If this be not done each carrier will live unto itself and will find it to its own interest to confine its cars to its own tracks.

“If the Interstate Commerce Commission is to be vested with power to make rules under which railroads shall be required upon penalty to furnish cars to shippers, the Commission should also be empowered to make rules under which free interchange of cars shall be effected or to require railroads engaging in interstate commerce to make such rule for their own protection and to provide for their own enforcement.”

Harlan, *Commissioner*, in making additional comment on the proposed reciprocal car-service plan said: “In my judgment, such a measure ought to have very full consideration before being enacted. It seems not improbable that if the railroads are penalized by Federal legislation for failing to supply cars for interstate commerce, the local commerce of the States in times of stress may be wholly neglected by the carriers in order to avoid such penalties, unless the Federal legislation is promptly followed by State legislation of the same nature. Such legislation without providing also for the compulsory interchange of cars would tend to compel carriers to keep all their cars on their own tracks in order to avoid demurrage penalties, and thus break up the advantages now enjoyed by shippers of through transportation.”⁹²

⁹² In the Matter of Car Shortage and Other Insufficient Transportation Facilities (Jan. 2, 1907), 12 I. C. C. R. 561.

CHAPTER XII.

ROUTES AND ROUTING.

SECTION

177. "Through" Route defined.
178. What determines the Existence of a Through Route.
179. Establishment of Through Route requires Concurrence of Carriers.
180. Duty of Carriers subject to the Act to Establish Through Routes and Reasonable Rules and Regulations for Their Operation.
181. Power of Interstate Commerce Commission to Establish Through Routes.
182. Bond to indemnify Carrier against Loss in the Establishment of a Through Route.
183. Routes should be indicated in Tariffs.
184. Tariff Provisions Governing Routes and Routing.
185. Parties not Competent in Law to establish Through Routes for Interstate Transportation.
186. Factors to be considered in Desirability of Routes.
187. Routing Instructions should be shown in Bill of Lading.
188. Mistake by Carrier in responding to Inquiry of Shipper as to Route.
189. Shippers charged with Notice of the Route over which Published Rate applies.
190. Right of Shipper to specify Particular Routing and Duty of Carrier to observe such Routing.
191. Duty of Carrier when no Specific Routing Instructions are given by the Shipper.
192. Effect of Trackage Arrangements under the Act to Regulate Commerce with Respect to Shipments Routed by Shipper.
193. Shipper may direct Terminal Routing or Delivery.
194. Use of Cars confined to a Particular Line.
195. Diversion of Traffic enroute by Carriers without the Consent of the Shipper.
196. Diversion of Traffic by Carriers to Different Route in Case of Necessity.
197. Where Higher Rate results in Consequence of Shipper's Routing.
198. Liability of Carriers for misrouting Shipments and Reparation Therefor.
199. Misrouting Shipment that could have moved Intrastate.

REGULATION—23.

SECTION

200. Misrouting involving Carriers not subject to the Act.

201. Misrouting Passengers.

202. Jurisdiction of the Interstate Commerce Commission to award Damages for misrouting Shipments by Carriers.

§ 177. "Through" Route defined.

A through route is a continuous line of railway formed by an agreement, express or implied, between connecting carriers. It must have a rate for every service it offers; and as the route is a new unit—one line formed of two or more connecting lines—so its rate for every service is a unit, even though it be divided between the several carriers arranging themselves into the through route.¹

The existence of a through route is to be determined by the incidents and circumstances of the shipment, such as the billing, the transfer from one carrier to another, the collection and division of transportation charges, or the use of a proportional rate to or from junction points or basing points. The incidents named are not to be regarded as exclusive of others which may tend to establish a carrier's course of business with respect to through shipments.²

Where through billing is given by the originating carrier and is recognized by all connecting carriers to destination, there is in existence a through route over which a through rate applies, which through rate is ascertainable from the tariff of the participating carriers at the date of shipment.³

A through route may exist, although there is no joint rate applicable to transportation over that route.⁴

Section 6 of the Act, expressly recognizes the possibility of a through route without a joint rate by the following language: "If no joint rate over the through route has been

¹ In the Matter of Through Routes and Through Rates (1907), 12 I. C. C. R. 164; see also *Memphis Freight Bureau v. Ft. S. & W. R. Co.* (1907), 13 I. C. C. R. 1.

² *Ibid.*

³ *Ibid.*

⁴ *Enterprise Transportation Co. v. Pa. Rd. Co. et al.* (1907), 12 I. C. C. R. 327.

established, the several carriers in such through route shall file, print, and keep open to public inspection as aforesaid the separately established rates, fares, and charges applied to the through transportation." The reasons for this provision are at least two:

(1) The policy of the law that every route and every service shall have a published rate equally known and equally available to all patrons of the carriers;

(2) The policy of the law that carriers otherwise not subject to the Act shall be, when participating in interstate business, subject to the provisions of the Act.⁵

§ 178. What determines the Existence of a Through Route.

In answering the question of fact as to the existence of a through route, all the incidents and circumstances of the shipment must be taken into account. Carriers arranging for a through route and also for a joint rate must give notice to the world of such arrangement by publication. Carriers forming through routes without joint rates, however, need publish and file only "the separately established rates, fares, and charges applied to the through transportation." As a matter of fact, most, if not all, carriers subject to the Act use their local rates as through rates when no joint rate is established, neither publishing nor filing such "separately established rates, fares, and charges applied to the through transportation" otherwise than in the tariffs of such local rates. While this may or may not be sufficient publication of such charges to meet all the purposes of the Act and save the carriers from prosecution and punishment, it does not necessarily indicate the existence of such through routes without joint rates as may be formed.

It is, therefore, evident that such incidents as the billing, the transfer from one carrier to another, the collection and division of transportation charges, the use of a proportional rate to or from junction points or basing points, and other like incidents of the transaction may properly

⁵ In the Matter of Through Routes and Through Rates (1907), 12 I. C. C. R. 164.

be depended upon for guidance as to the existence of a through route.

It is well settled that, whatever other facts or incidents of a shipment may serve to prove the existence of a through route, a through bill of lading is, as to the carriers recognizing it, conclusive evidence of the existence of such through route.⁶

§ 179. Establishment of Through Route requires Concurrence of Carriers.

A carrier cannot establish a through route and joint rate except under concurrence of the other carriers that form parts of such route.⁷

§ 180. Duty of Carriers subject to the Act to establish Through Routes and Reasonable Rules and Regulations for Their Operation.

By Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*), carriers are required "to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto."

§ 181. Power of Interstate Commerce Commission to Establish Through Routes.

¶ A. ESTABLISHMENT OF THROUGH ROUTES IN GENERAL.

At common law no obligation rested upon carriers to form through routes. Their formation was a matter of contract, and each carrier was free to enter into the contract or not, as it elected.¹¹

⁶ See note 1, *supra*.

⁷ *Memphis Freight Bureau v. Ft. S. & W. Rd. Co.* (1907), 13 I. C. C. R. 1.

¹¹ *Railroad Commission of Kentucky v. L. & N. Rd. Co.*, 10 I. C. C. R. 173, citing cases as follows: *Ky. & Ind. Bridge Co. v. L. &*

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that the Commission may, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line.¹²

Under the old law the Commission was given authority to establish through routes and rates, "*provided, no reasonable or satisfactory through route exists.*"

¶ B. COMMISSION MAY NOT ESTABLISH THROUGH ROUTES IN CONNECTION WITH STREET ELECTRIC PASSENGER RAILWAYS.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that the Commission shall not establish any through route between street electrical passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character.¹³

¶ C. COMMISSION NO AUTHORITY TO ESTABLISH ROUTES WITH INDEPENDENT WATER CARRIERS.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that the Commission shall not have the right to establish any route when the transportation is wholly by water, and that any transportation by water affected by

N. Rd. Co., 2 I. C. R. 351; 2 L. R. A. 289; 37 Fed. Rep. 567; Oregon Short Line & U. N. R. Co. v. Northern Pacific R. Co., 4 I. C. R. 249; 51 Fed. Rep. 465; Little Rock & M. R. Co. v. St. Louis S. W. R. Co., 4 I. C. R. 854; 26 L. R. A. 192; 11 C. C. A. 417; 27 U. S. App. 380; 63 Fed. Rep. 775, affirming 59 Fed. Rep. 400.

¹² Act to Regulate Commerce, Section 15 (*as amended June 18, 1910*).

¹³ Ibid.

that Act shall be subject to the laws and regulations applicable to transportation by water.¹⁴

¶ D. COMMISSION MAY NOT REQUIRE CARRIER TO EMBRACE SUBSTANTIALLY LESS THAN ENTIRE LENGTH OF ROAD IN ESTABLISHMENT OF THROUGH ROUTES.

The Act to Regulate Commerce (*as amended June 18, 1910*), provides that in establishing through routes the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.¹⁵

¶ E. WHEN COMMISSION WILL REFUSE TO EXERCISE ITS AUTHORITY TO ESTABLISH THROUGH ROUTES.

The law does not require the Commission in all cases where no through routes and joint rates exist to establish them, but only empowers it to do so in proper cases with the intent of giving effect to the general purposes of the Act by securing reasonable facilities to the public and preventing unreasonable and unjust rates, practices, and discriminations. In the exercise of this authority the Commission is bound by the same considerations of justice and fairness as it is in the exercise of the rate-making power in other respects.²²

Where neither the interest of the public nor the ends of justice as between the parties directly interested, will be promoted by the establishment of through routes and joint rates and divisions thereof, the Commission will refuse to

¹⁴ Act to Regulate Commerce, Section 15 (*as amended June 18, 1910*).

¹⁵ *Ibid.*

²² *Loup Creek Colliery Co. v. Virginia Ry. Co.* (1907), 12 I. C. C.

exercise the authority conferred upon it with respect to establishing such routes and rates.²³

§ 182. Bond to indemnify Carrier against Loss in the Establishment of a Through Route.

Where a railroad company was ordered by the Commission to establish with a connecting carrier a through route and joint rate: *Held*, That if for any reason the railroad company conceived that it would incur risk of loss because of the financial ability of the connecting carrier, the Commission would provide, as one of the terms under which the through route was to be operated, that the connecting carrier should give to the railroad company a suitable bond of indemnity.³⁰

§ 183. Routes should be indicated in Tariffs.

See *Section 469, Paragraph U, post*.

§ 184. Tariff Provisions Governing Routes and Routing.

The different routes via which the tariff applies may be shown therein together with appropriate reference to the application of the rates.³¹ When a tariff specifies routing, the rates may not be applied via routes not specified. A tariff may show the routing ordinarily and customarily to be used and may provide that, if from any cause shipments are sent via other junction points, but over the lines of carriers parties to the tariff, the rates will apply.³²

If a tariff contains no routing direction the joint rates shown therein are applicable between the points specified via the lines of any and all carriers that are parties to the tariff; and shipper must not be required to pay higher charges than those stated in the tariff because the carriers have not agreed divisions of the rates via the junction through which the shipment moves. If agent of carrier bills or sends shipment via a route or junction point that is

²³ *Loup Creek Colliery Co. v. Virginia Ry. Co.* (1907), 12 I. C. C. R. 471.

³⁰ See note 4, *supra*.

³¹ Rule 4, Tariff Circular 17-A; Rule 4, Tariff Circular 16-A.

³² *Ibid*.

covered by the tariff, but via which no division of the rate applies, it is for the carriers to agree between themselves upon the division of the rate, and the intermediate or delivering carriers may demand from the carrier whose agent so missends shipment their full local rates for the services which they perform.³³

§ 185. Parties not Competent in Law to establish Through Routes for Interstate Transportation.

Where a railroad company, stage line and hotel association joined together to form a through route and joint rate for the transportation of passengers from eastern points to the Yellowstone National Park and for providing accommodations and stage transportation at such reservation, the Commission held that such parties were not competent in law to form a through route and establish joint rates as provided in Section six of the Act to Regulate Commerce.³⁴

§ 186. Factors to be considered in Desirability of Routes.

¶ A. IN GENERAL.

A route satisfactory to one kind of freight might not be satisfactory with respect to another. Most commodities are indifferent to heat and cold, and it is therefore immaterial whether they are carried through high or low temperatures. Fruits and vegetables may be injured and indeed totally destroyed by freezing or overheating. It might well happen, therefore, that a route entirely satisfactory as to most kinds of freight would not be satisfactory to these perishable articles.³⁵ In the case of freight it is possible to distinguish between different commodities and to establish a through route as to one article and not as to another.³⁶ With passengers, however, this cannot be done, since whatever joint rate is ordered must be open to the general public.³⁷

³³ Rule 4, Tariff Circular 17-A; Rule 4, Tariff Circular 16-A.

³⁴ *Wylie v. Northern Pacific Ry. Co. et al.* (1905), 11 I. C. C. R. 145.

³⁵ *In re Through Passenger Routes via Portland, Oregon* (1909), 16 I. C. C. R. 300.

³⁶ *Ibid.*

³⁷ *Ibid.*

A route cannot be called satisfactory unless it reasonably accommodates traffic which is entitled to accommodation.³⁸

¶ B. DISTANCE AS A FACTOR IN DESIRABILITY OF ROUTES.

Distance is an important element in determining whether a route is satisfactory. A circuitous route involving a longer haul and therefore greater delay would not be, ordinarily, as desirable as a direct one.³⁹

A shipment was tendered destined to a certain point the direct route to which was over the lines of two carriers, a distance of 358 miles, the rate via that route being 22 cents. It was possible to send the shipment around over the lines of three carriers, a distance of 617 miles, and secure a combination rate of only 19 cents. Application for refund was made account the difference between the rates. *Held*, That the claim for refund should be denied on the ground that the much longer and indirect route is not a reasonable route.⁴⁰

§ 187. Routing Instructions should be shown in Bill of Lading.

If the shipper desires his traffic forwarded via any particular route in accordance with the carrier's tariffs, and to which route the initial carrier is a member, he should so specify in the bill of lading. Shippers should be careful to specify in the bill of lading the terminal routing desired. Careful attention by shippers in selecting the route that can make the required delivery will obviate unnecessary expense and inconvenience.

Where instructions for shipping are out of the ordinary course and the agent consents to bill by the route indicated, it should appear on the bill of lading, and the shipper thus receives immediate notice of the route.⁴¹

In some instances a shipper tenders a shipment accom-

³⁸ *Leonard v. K. C. S. Ry. Co. et al.* (1908), 13 I. C. C. R. 573.

³⁹ *Pacific Coast Lbr. Mfg. Ass'n et al. v. Northern Pacific Ry. Co. et al.* (1908), 14 I. C. C. R. 51.

⁴⁰ Rule 91, Con. Rul. Bul. No. 4 (June 29, 1908).

⁴¹ *Dewey Bros. Co. v. B. & O. Rd. Co. et al.* (1905), 11 I. C. C. R. 481.

panied by a bill of lading in which certain routing is specified and in which he also enters the rate which he expects to have applied to the shipment. The Commission has stated that in such instances if the rate so entered in the bill of lading does not apply via the route specified in the bill of lading, but is lawfully applicable via another route, it is the duty of the carriers to send the shipment via the route via which such rate lawfully applies, unless a lower rate is lawfully applicable via the route specified by the shipper; and that failure on the part of carrier's agent to follow this course will be deemed misrouting, responsibility for which will rest upon the carrier whose agent so misroutes the shipment.⁴²

It should be noted, however, that this ruling was made by the Commission prior to the amendment of June 18, 1910, the law as amended on that date reads as follows:^{42a}

In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of the Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided, to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading.

It is questionable whether under the new law it is obligatory upon the carrier to strictly observe the routing of the shipper, as shown in the bill of lading, regardless of the rate inserted therein, or whether the above rule as promulgated by the Commission is still applicable. This point has not been decided under the new law.

⁴² Rule 214, Con. Rul. Bul. No. 4 (March 18, 1907).

^{42a} Act to Regulate Commerce, Section 15 (as amended June 18, 1910).

§ 188. Mistake by Carrier in responding to Inquiry of Shipper as to Route.

A mistake by a carrier in responding to an inquiry by a shipper either as to the rate or as to the route, will relieve neither the one nor the other from the obligation of fulfilling the law's requirements; in either event the carrier must collect and the shipper must pay the rate as published for the route over which the shipments actually move.⁴³

§ 189. Shippers charged with Notice of the Route over which Published Rate applies.

A schedule of rates published in the manner provided by law speaks with equal authority to the shipper and the carrier, and both are equally chargeable with notice of the rate and of the route over which the rate is applicable.⁴⁴

§ 190. Right of Shipper to specify Particular Routing and Duty of Carrier to observe such Routing.

Routing instructions are given by shippers for different reasons. Their experience may lead them to think that one route is safer or more expeditious than another; they may prefer to deal with one carrier rather than another; or they may have the privilege, under tariffs applicable to one route, of reconsignment, diversion, elevation, inspection, milling in transit, or other benefits that are not available under the tariffs applicable to another route.⁴⁵

The Act to Regulate Commerce (*as amended June 18, 1910*), reads as follows:⁴⁶

In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act

⁴³ *Poor Grain Co. v. C. B. & Q. Ry. Co. et al.* (1907), 12 I. C. C. R. 469.

⁴⁴ *Ibid.*

⁴⁵ *Duluth & Iron Range Rd. Co. v. C. St. P. M. & O. Ry. Co.* (1910), 18 I. C. C. R. 485.

⁴⁶ Act to Regulate Commerce, Section 15 (*as amended June 18, 1910*).

provided, to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* that the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

§ 191. Duty of Carrier when no Specific Routing Instructions are given by the Shipper.

It is the duty of shippers to have their goods carried, and the duty of common carriers to receive and forward freight, via the least expensive routes at reasonable through rates.⁴⁹

When no specific routing instructions are given by the shipper it is the duty of the carrier to transport the shipments via the route carrying the lowest rate.⁵⁰

It is the duty of a carrier, in the absence of routing instructions to the contrary, to forward shipments, having due regard to the interests of the shipper, ordinarily via that reasonable and practicable route over which the lowest charge for the transportation applies.⁵¹

In the absence of specific through routing by shippers, which carrier is willing to observe, it is the duty of the agent of the carrier to route shipment via the cheapest reasonable

⁴⁹ Newland et al. v. Northern Pacific Ry. Co. et al., 6 I. C. R. 131; 4 I. C. R. 474.

⁵⁰ Marshall & Michel Grain Co. v. St. L. & S. F. R. Co. et al., 16 I. C. C. R. 385; Preston v. C. & O. Ry. Co., 16 I. C. C. R. 565.

⁵¹ Hennepin Paper Co. v. Northern Pacific Ry. Co. et al., 12 I. C. C. R. 535; see also Washington Broom & W. W. Co. v. C. R. I. & P. Ry. Co. (1909), 15 I. C. C. R. 219; Flaccus Glass Co. v. C. C. C. & St. L. Ry. Co. et al. (1908), 14 I. C. C. R. 333.

route known to him of the class designated by the shipper, that is, all-rail or rail-and-water and via which he has rates which he can lawfully use.⁵²

A shipment was delivered to a rail carrier destined to a point to which it might be forwarded via either all-rail or rail-lake-and-rail route. No class of route was designated by the shipper. Shipment was forwarded all rail: *Held*, That taking into consideration the liabilities of carriers and the question of marine insurance upon water-borne traffic, the carrier's agent did not negligently misroute this shipment.⁵³

In a case where the shipper gives no routing instructions, but leaves it to the freight agent to select the route for him and to ship it via that route, such freight agent is the agent of the shipper as well as of the company in selecting the route which will be best and least expensive to the shipper, and should in every instance, to the best of his knowledge and information, select such route as will be best and least expensive to the shipper, and make such notation on the way-bill as will properly carry the freight by that route.⁵⁴

An observance of these plain and simple rules by freight agents would prevent numerous claims made for overcharges on shipments of freight as well as confusion in such shipments.⁵⁵

A carrier exercising the right to dictate intermediate routing must make its election at the time it accepts the shipment and if the carrier accepts the shipment with specific instructions it must so move the traffic or bear the damage arising out of its departure from the instructions.⁶³

⁵² See note 42, *supra*.

⁵³ Rule 190, Con. Rul. Bul. No. 4 (June 14, 1909).

⁵⁴ See note 46, *supra*.

⁵⁵ *Ibid*.

⁶³ Rule 143, Con. Rul. Bul. No. 4.

§ 192. Effect of Trackage Arrangements under the Act to Regulate Commerce with Respect to Shipments Routed by Shipper.

The Mineral Point & Northern Railway Company has trackage arrangements with the Chicago, Milwaukee & St. Paul for the joint use of the latter's tracks between Highland Junction and Mineral Point, Wis. Upon inquiry from the general manager of the first named road as to whether the St. Paul rightfully may refuse to turn shipments over to it at Highland Junction, when so routed, and retain possession of the revenue for the haul from that station to Mineral Point: *Held*, On the understanding that the shipments in either case would be delivered at the same warehouse and at the same rate, that under the Act to Regulate Commerce no obligation rests on the Chicago, Milwaukee & St. Paul to turn over shipments to the Mineral Point & Northern Railway at Highland Junction for transportation to Mineral Point.⁶⁴

§ 193. Shipper may direct Terminal Routing or Delivery.

In order to secure the desired delivery to industries, plants, or warehouses and avoid unnecessary terminal or switching charges, the shipper may direct as to terminal routing or delivery of shipments which are to go beyond the lines of the initial carriers; and his instructions as to such terminal delivery must be observed in routing and billing such shipments.⁶⁵

This privilege was expressly conferred upon shippers by the amendment to the Act to Regulate Commerce of June 18, 1910.^{65a}

§ 194. Use of Cars confined to a Particular Line.

If a foreign car is available, which under rules as to car service, must be sent via a particular line or route over

⁶⁴ Rule 168, Con. Rul. Bul. No. 4 (April 13, 1909).

⁶⁵ See note 42, *supra*.

^{65a} Act to Regulate Commerce, Section 15 (as amended June 18, 1910).

which a higher rate obtains, agent must explain to shipper that fact and allow shipper to elect whether he will use that car at the higher rate or wait for another car. If shipper elects to use the car at the higher rate, agent should so note on bill of lading. If agent is in doubt, he should secure information from proper officers of traffic department. It is important that agents at initial points be able to, and that they do, quote correct rates and give correct routings.⁶⁶

§ 195. Diversion of Traffic enroute by Carriers without the Consent of the Shipper.

Where a carrier unnecessarily diverts a shipment enroute without the knowledge or consent of the shipper, the carrier is liable to an award of reparation for damages sustained as a result of such diversion.⁶⁷

The action of a carrier in diverting through traffic from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route over which it is also engaged in transportation, sometimes results in discriminations and prejudices, both as to rebates and facilities; and inequality in treatment of shippers and localities, having no other justification than this end, is indefensible.⁶⁸

A carrier accepted a carload shipment for movement to a point beyond its line. After delivering the shipment to a connection at a junction point it was advised that the connecting line had been closed by floods. The initial carrier accepted the return of the car from that line and ordered it forwarded to destination via another route carrying higher rates, taking this action without instructions from the shipper. *Held*, That the initial line was responsible

⁶⁶ See note 42, *supra*.

⁶⁷ *Carstens Pkg. Co. v. O. R. & N. Co. et al.* (1909), 15 I. C. C. R. 482; see also *Woodward & Dickerson v. L. & N. R. R. Co.* (1909), 15 I. C. C. R. 170.

⁶⁸ *Colorado Fuel & Iron Co. v. Southern Pacific Co.* (1895), 13 I. C. C. R. 488.

to the shipper for the resulting increase in the transportation charges.⁶⁹

§ 196. Diversion of Traffic by Carriers to Different Route in Case of Necessity.

¶ A. FREIGHT.

The duty that may rest on a carrier under normal conditions to transport merchandise by a particular and the most advantageous route, is restrained and limited by the right of the carrier, in case of necessity, to resort to such reasonable direct route as may be available under the existing conditions to carry the freight to its destination, and if such necessity exists, in the absence of negligence in selecting the changed route, the carriers are not responsible for damages resulting from the change even if such change may be, in law, a concurring and proximate cause of such damage.⁷⁰

For example, the Kansas City Flood of 1903 was so unexpected and of such an unprecedented character that a railroad company was not, under the circumstances of the case, chargeable with negligence in sending cattle trains via Kansas City or for failing to move the cattle from the stock yards before the climax of the flood.⁷¹

¶ B. PASSENGERS.

A tariff provided for the movement of a private car or sleeper at the regular fare for each occupant with a minimum of twenty adult fares and a minimum collection of \$25.00 for each movement. Its direct line being blockaded by a washout, a carrier sent individual passengers around a longer route over its lines at the short-line fare, but charged the occupants of such a private car then on its lines the

⁶⁹ Rule 83, Con. Rul. Bul. No. 4 (June 9, 1908).

⁷⁰ *Empire State Cattle Co. v. A. T. & S. F. Ry. Co.* (1908), 210 U. S. 1, 52 L. ed. 931, 28 Sup. Ct. 607, affirming 147 Fed. Rep. 457, 77 C. C. A. 601.

⁷¹ *Ibid.*

full mileage rates for the longer haul: *Held*, That under the tariff rule the car and party should have moved as the individual passengers were moved under the same circumstances; and that the short-line fare ought also to have been applied to the private car and party.⁷²

¶ C. COMPENSATION BETWEEN CARRIERS IN CASES WHERE
TRAFFIC IS DIVERTED BECAUSE OF BLOCKADES.

Whenever, by reason of blockades upon the line of a carrier resulting from storm, washout, wreck, or similar casualty, it becomes necessary for it to divert to the line of another carrier, passengers or freight that are in transit, the carrier so diverting its business should pay the carrier or carriers upon whose train such passengers or freight are carried regular tariff rates or fares from and to the points between which it or they transport such diverted traffic, except that if the carrier accepting such diverted traffic is participant in a joint tariff in which the diverting line is also a participant and under which the diverted traffic is being moved, settlement may be made on basis of the division of the through joint rate or fare.

If because of such blockade a carrier's train is detoured over that of another carrier, or special train is arranged for movement of the interrupted traffic, the tariff rates or fares, if there be any for such movement, must be applied. In the absence of such tariff regulations, compensation should be agreed upon.⁷³

This rule does not apply in cases of congested lines due to heavy or ordinary causes.⁷⁴

**§ 197. Where Higher Rate results in Consequence of
Shipper's Routing.**

Complainant specifically directed that his shipment of live stock be forwarded via a certain route in order that he

⁷² Rule 138, Con. Rul. Bul. No. 4 (February 2, 1909).

⁷³ Rule 213, Con. Rul. Bul. No. 4 (March 4, 1907); Rule 33 Tariff Circular 16-A (Express Companies).

⁷⁴ *Ibid*.

might have the advantage of trying a market so reached. Shipment moved in accordance with his directions. He then claimed reparation on the ground that a lower rate applied via another and more direct route than the one which he selected, but via which he could have reached the market which he desired to try. Commission dismissed the case upon the ground that it was without merit.⁷⁵

It is the duty of a carrier to transport shipments via the route designated by the consignee, and if this cause additional expense to the shipper, the carrier incurs no liability therefor.⁷⁶

If the shipper gives definite instructions to move the cars via the more expensive route, the carrier is relieved of the obligation to forward via a cheaper route.⁷⁷

Where a shipper directs that a shipment be forwarded via a circuitous route over which the rate is higher than via a more direct route, the carrier should forward the shipment via the route indicated and collect the rate established for that route.⁷⁸

Complainant directed that its shipments of two carloads of canned vegetables from Green Bay, Wis., to Washington, Ohio, move via a certain route over which there was no joint through rate, and the sum of the local rates was applied.

The goods might have been shipped by complainant between these points over a route having a joint rate less than the sum of the locals. *Held*, That the initial carrier was bound to observe the instructions of the consignor in this case. It was also bound to collect the published rate applicable to the designated route and entails no liability under the law for so doing.⁷⁹

⁷⁵ *Counsil v. St. L. & S. F. Rd. Co. et al.*, 16 I. C. C. R. 188.

⁷⁶ *Bregman & Co. v. Penna. Co. et al.* (1909), 15 I. C. C. R. 478.

⁷⁷ *Poor Grain Co. v. C. B. & Q. Ry. Co.*, 12 I. C. C. R. 418; *Dewey Bros. Co. v. B. & O. Rd. Co. et al.*, 11 I. C. C. R. 481.

⁷⁸ See note 43, *supra*.

⁷⁹ *Larsen Canning Co. v. C. & N. W. Ry. Co.* (1908), 13 I. C. C. R. 287.

§ 198. Liability of Carriers for misrouting Shipments and Reparation Therefor.

See *Section 424, post.*

§ 199. Misrouting Shipment that could have moved Intrastate.

A shipment destined to another point in the same State was delivered to a carrier without routing instructions. It was sent by a route which took it outside the State lines, and required the payment of an interstate rate higher than the State rate which would have applied on an available intrastate route: *Held*, That the Commission recognized the right of the shipper to route his shipment, which in this instance the shipper neglected to do; that the shipment moved interstate, and that the Commission cannot say that the interstate line can apply any other than its lawfully published tariff rate except under special permission or order of the Commission.⁸⁰

§ 200. Misrouting involving Carriers not subject to the Act.

A shipment was tendered to a carrier in North Carolina, destined to California. The shipper requested that it be sent via New York and the Isthmus of Panama. The shipment was forwarded all rail under a rate alleged to be higher than would have applied via the route indicated: *Held*, That the Commission cannot authorize refund because no tariffs are on file with the Commission via the route over which the shipper directed the shipment moved, and there is, therefore, no official measure of the accuracy of the claim for overcharge or the amount thereof.⁸¹

§ 201. Misrouting Passengers.

Agents of carriers sometimes misroute passengers or by other error cause passengers to pay additional and unnecessary transportation charges. The Commission has held that

⁸⁰ Rule 140, Con. Rul. Bul. No. 4.

⁸¹ Rule 93, Con. Rul. Bul. No. 4 (June 20, 1908).

the same rules applicable to the misrouting of freight apply to the misrouting of passengers.⁸²

§ 202. Jurisdiction of the Interstate Commerce Commission to award Damages for misrouting Shipments by Carriers.

See *Section 405, Paragraph F, post.*

⁸² Rule 113, Con. Rul. Bul. No. 4 (Nov. 12, 1908).

CHAPTER XIII.

REFRIGERATION AND VENTILATION AND CHARGES THEREFOR.

SECTION

- 203. Duty of Carriers to furnish Refrigeration and Ventilation Facilities.
- 204. Carriers may contract with a Car-Line Company to Furnish Refrigeration Facilities.
- 205. Responsibility of the Carrier for the Refrigeration and Ventilation Facilities Furnished to the Shipper.
- 206. Refrigeration Charges must be Just and Reasonable.
- 207. Reasonableness of Refrigeration Charges.
- 208. Elements to be considered in fixing Refrigeration Charges.
- 209. Relation of a Refrigeration Charge to the Freight Rate.
- 210. Method of assessing Refrigeration Charges.
- 211. Publication of Refrigeration Charges.
- 212. Jurisdiction of the Interstate Commerce Commission over Refrigeration and Ventilation Facilities and Charges.

§ 203. Duty of Carriers to furnish Refrigeration and Ventilation Facilities.

¶ A. REFRIGERATION AND VENTILATION SERVICE.

Section 1 of the Act to Regulate Commerce defines the term "transportation" to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and *all services in connection with the * * * ventilation, refrigeration or icing*, and handling of property transported." This section (*as amended June 18, 1910*), also declares that "it shall be the duty of every carrier subject to the provisions of the Act to provide and furnish such *transportation* upon reasonable request therefor and to establish through routes and just and reasonable rates applicable thereto; and to *provide reasonable facilities for*

operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.”

Prior to the Hepburn amendment of June 29, 1906, portions of which are quoted above, the Commission repeatedly expressed the opinion and the Supreme Court of the United States decided, that where a railroad company held itself out as a common carrier of perishable freight it was the duty of such carrier to furnish proper facilities to insure the safe delivery of such freight at destination. Under the amended Act common carriers subject thereto may not lawfully refuse transportation as therein defined, but must upon reasonable request afford the same upon established rates filed and kept posted as required by law.¹

¶ B. REFRIGERATOR CARS.

See “*Equipment—Car Supply and Distribution—Car Shortage*,” Chapter 11, *ante*.

§ 204. Carriers may contract with a Car-Line Company to Furnish Refrigeration Facilities.

A carrier may lawfully enter into an exclusive contract with a car-line company, like the Armour Car Lines, to furnish refrigeration facilities for transportation over its road; both refrigeration cars and ice to be used therein.²

§ 205. Responsibility of the Carrier for the Refrigeration and Ventilation Facilities Furnished to the Shipper.

¶ A. SUFFICIENCY OF THE CAR.

While it is the duty of the carrier to provide the neces-

¹ Waxelbaum & Co. v. A. C. L. R. Co. et al. (1907), 12 I. C. C. R. 178, affirmed in Standard Lime & Stone Co. et al. v. Cumberland Valley Rd. Co. et al. (1909), 15 I. C. C. R. 620.

² In the Matter of Transportation and Refrigeration of Fruit, etc. (1904), 10 I. C. C. R. 360.

sary refrigerator cars it may discharge that duty either by owning the cars or by leasing them.³ The first section of the Act defines the term "transportation" to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, *irrespective of ownership or of any contract, express or implied, for the use thereof.*" The measure of responsibility, therefore, under which the railroad company rests to the shipper for the sufficiency of the car furnished is exactly the same whether it obtains the equipment by purchase or by lease.⁴ Pending the performance of the service of transportation the car is to every intent the car of the railroad company using it.⁵

¶ B. SUFFICIENCY OF THE SERVICE.

Under Section 1 of the Act to Regulate Commerce which defines the term "transportation" to include "all services in connection with the * * * ventilation, refrigeration or icing * * * of property transported" and making it the duty of the carrier to "provide and furnish such transportation upon reasonable request therefor," there can be no question of the responsibility of the carrier for the sufficiency of the refrigeration service rendered by it.

In a case where the railroad company insisted that the ice should be supplied only by the party whom it appointed, and where it collected from the shipper and passed over to such party the compensation for the service, the railroad company was held to stand responsible for the refrigeration as far as any other part of the transportation.⁶

³ In the Matter of Charges for the Transportation and Refrigeration of Fruit, etc. (1905), 11 I. C. C. R. 129.

⁴ In the Matter of Charges for Transportation and Refrigeration of Fruit, etc. (1905), 11 I. C. C. R. 129. This has often been affirmed by different courts, and has been expressly decided by the Supreme Court of the United States; *Pennsylvania Railroad Company v. Roy*, 102 U. S. 451; 26 L. ed. 141.

⁵ *Ibid.*

⁶ See note 3, *supra*.

§ 206. Refrigeration Charges must be Just and Reasonable.

Section 1 of the Act to Regulate Commerce after defining the term "*transportation*" to include "*refrigeration and icing*," provides that "*all charges made for any service rendered or to be rendered in the transportation of property, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.*"

§ 207. Reasonableness of Refrigeration Charges.

¶ A. IN GENERAL.

The Commission has held \$2.50 per ton to be a just and reasonable refrigeration charge on fruit shipped from Michigan to interstate points, when based upon the ice actually used. This Commission stated that this would materially exceed the actual cost to the carrier in most instances, and would leave an ample margin of insurance against whatever liability it assumes in undertaking the service of refrigeration.⁷

¶ B. NATURE OF THE COMMODITY AS AFFECTING REASONABLENESS OF REFRIGERATOR CHARGE.

In one case the Commission intimated that the charge named for peaches should apply to plums, berries and other highly perishable fruits; that grapes should take a lower charge partly because they are shipped later in the season when the weather is cooler and partly because they inherently carry better; that possibly a still lower charge ought to be made in case of green apples and green pears. However, as no testimony was before the Commission on those points it declined to express an opinion.⁸

§ 208. Elements to be considered in fixing Refrigeration Charges.

The service of refrigeration consists of two elements:

⁷ See note 3, *supra*.

⁸ *Ibid*.

First, the cost of the ice itself, i. e., the actual cost of the ice delivered in the bunkers, at the various points where it must be obtained for the purpose of icing the car to its destination; second, the reasonable cost of performing this service, including inspection and supervision, beginning with the loading of the car and extending to delivery at final destination.⁹

§ 209. Relation of a Refrigeration Charge to the Freight Rate.

The expense incurred by carriers in furnishing ice necessary for the refrigeration of perishable traffic, which they undertake to transport, is a necessary element of the cost of the transportation of such traffic, and the amount received or demanded therefor is a freight charge;¹⁰ and so denominated by Section 6 of the Act to Regulate Commerce which requires icing charges to be shown in the carrier's printed schedule.

§ 210. Method of assessing Refrigeration Charges.

There are at least three methods which may be adopted by the carrier in imposing refrigeration charges:¹¹

(a) It may charge for the ice actually used at so much per ton;

(b) It may charge for the service of refrigeration at so much per car, whatever the quantity of ice consumed may be; or,

(c) It may charge a rate by the hundred pounds when the property moves under refrigeration.

All these different methods have their advantages and disadvantages. Some shippers favor one system, some another.¹²

§ 211. Publication of Refrigeration Charges.

See *Section 461, post.*

⁹ See note 3, *supra*.

¹⁰ *Truck Farmers' Association v. N. E. R. Co. of S. C. et al.* (1895), 6 I. C. R. 295.

¹¹ See note 3, *supra*.

¹² *Ibid.*

§ 212. Jurisdiction of the Interstate Commerce Commission over Refrigeration and Ventilation Facilities and Charges.

As stated elsewhere the first section of the Act to Regulate Commerce defines the term "transportation" to include "cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the * * * ventilation, refrigeration or icing * * * of property transported." This section (*as amended June 18, 1910*); also declares that it shall be the duty of every carrier subject to the provisions of the Act "to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto."

Section 6 of the Act requires "that every common carrier subject to the provisions of the Act shall file with the Commission * * * and print and keep open to public inspection schedules showing all the rates and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad." This section also requires that the schedules of rates and charges for transportation to be filed and printed as required "shall plainly state the places between which the property will be carried, and shall state separately all * * * icing charges, and all other charges which the Commission may require, all privileges and facilities granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and charges, or the value of the service rendered to the shipper or consignee."

By section 12 of the Act the Commission is authorized and required to execute and enforce the provisions of the Act.

The jurisdiction of the Commission and the purposes of the law cannot be defeated by the omission or failure of the carriers to include in their schedules and keep posted and open to public inspection the rates and charges for the entire service, both transportation proper and refrigeration, which under the law they are bound to provide.¹³

¹³ See note 1, *supra*.

CHAPTER XIV.

TRANSIT PRIVILEGES.

SECTION

- 213. Milling and Manufacturing in Transit.
- 214. "Reconsignment," defined.
- 215. Legality of Transit Privileges.
- 216. Charges for Allowance of Transit Privileges.
- 217. "Floating" Cotton.
- 218. Stopping Stock in Transit.
- 219. Allowance of Transit Privileges Optional with the Carrier.
- 220. Shippers cannot demand Transit Privileges as a Matter of Right.
- 221. Rate to be applied on the Reshipped Commodity under a Transit Privilege.
- 222. Shipment that moved In, under a Former Tariff does not Lose the Benefit of Transit Privilege Cancelled pending the Out Movement.
- 223. Transit Privilege not availed of cannot be renewed after the Expiration of the Time Allowed in the Tariffs.
- 224. Substituting Tonnage at Transit Point.
- 225. Transit Privileges will not be given a Retroactive Effect.
- 226. Milling Timber in Transit where the Road hauling the Raw Material is Owned or Controlled by the Mill Owner.
- 227. Reconsignment on Shipper's Order of Part Lots of Consignments of Goods Held in Storage.
- 228. Free Storage creating Distributing Point for Private Industry.
- 229. Reconsignment Rate Higher than the Proportion of the Through Rate.
- 230. Reshipping Rate from Primary Grain Market.
- 231. Reconsignment of Shipments refused by Consignees or damaged in Transit.
- 232. Contract with Shipper for Allowance of Transit Privileges.
- 233. Reconsignment Rules subject to Cancellation at Option of Carrier Unlawful.
- 234. Publication of Transit Privileges and Rules and Regulations Affecting the Same.
- 235. Discrimination in the Allowance of Transit Privileges.
- 236. Jurisdiction of the Commission over Transit Privileges.

§ 213. Milling and Manufacturing in Transit.

¶ A. NATURE OF THE PRIVILEGE.

At the present time the principle of milling in transit is applied to many commodities. Generally in its application the raw material pays the local rate into the point of manufacture; when afterwards the manufactured product goes forward it is transported upon a rate which would be applicable to that product had it originated in its manufactured state at the point where the new material was received for transportation, whatever has been paid into the mill being accounted for in this adjustment. Under this or some equivalent arrangement at the present time grain of all kinds is milled and otherwise treated in transit; flour is blended, cotton is compressed, lumber is dressed and perhaps otherwise manufactured; live stock is stopped off to test the market.¹

The services rendered by the carrier on transit-milled freight are practically identical with those rendered in delivering and receiving distinct shipments at the milling point.²

There is much to be said in favor of milling and manufacturing in transit, and there is much that can be said about irregular and discriminating practices that are invited and possible thereunder. There is, of course, a limit to the products which can reasonably be included in the list of those which will be transported at the raw material rate, either with or without a transit privilege. It might be reasonable to withhold transit privileges from a product that is essentially different from the raw material and from the other products of the same raw material which are accorded transit rates, as for example a liquid product of grain.³

Whether the principle of milling in transit may be extended to a particular case will depend largely upon the facts.⁴

¹ Central Yellow Pine Association v. V. S. & P. Ry. Co. et al. (1904), 10 I. C. C. R. 193.

² Listman Mill Co. v. C. M. & St. P. Ry. Co. (1898), 8 I. C. C. R. 47.

³ Douglas & Co. v. C. R. I. & P. Ry. Co. et al., 16 I. C. C. R. 233.

⁴ See note 1, supra.

The following illustration may serve in a general way to explain the principle of milling in transit:

Suppose a car of grain containing 40,000 pounds is shipped from a Chicago rate point to a Philadelphia rate point and milled in transit at Columbus, Ohio. The rate we shall assume is $15\frac{1}{2}$ cents from Chicago and vicinity to Philadelphia and the contiguous territory, and to this is added a milling-in-transit premium of $1\frac{1}{2}$ cents per hundred for the milling privilege at Columbus. This would make a total rate of 17 cents per 100 pounds, and a total transportation charge of \$68.00 from the point where the grain shipment originated to the point where the milled product is delivered.

It can readily be appreciated that this charge is much less than it would be, should the shipper be compelled to pay the local rate on the grain from Chicago to Columbus plus the local rate on the milled product from Columbus to Philadelphia.

¶ B. CONDUCTING BUSINESS UNDER OPEN RATES AS DISTINGUISHED FROM A TRANSIT PRIVILEGE.

Where a business like the milling industry is conducted under local rates on the wheat to the mill point, and local or through rates on the product from that city, this is doing business under open rates or, as the term is sometimes employed, in the "open market," as distinguished from milling in transit under the through rate from point of origin of the wheat to ultimate destination of the product plus an arbitrary which is added for the privilege.⁵

§ 214. "Reconsignment" defined.

Usually the combination of local rates is higher than the through rate. Frequently a shipper desires to forward a shipment to a certain point, and have the privilege of changing the destination or consignee while the shipment is in transit, or after it arrives at the destination to which originally consigned, and to forward it under the through rate

⁵ See note 2, *supra*.

from the point of origin to the final destination. Most carriers grant such privilege and generally make a charge therefor.⁶ This method is also used very frequently by shippers at the present time to "test the market" at a particular point.

In the ordinary acceptance of the term, a reconsignment refers to a change in destination, accompanied or not by a change in the name of the consignee, rather than to a mere change in the name of the consignee; but the latter change is recognized by the Commission as a reconsignment and the railroads are therefore justified in putting that interpretation upon their tariffs.⁷

For a while some carriers did not count a change of consignee which did not involve a change of destination as a reconsignment, while others did consider it a reconsignment and charged for it as such. This naturally led to confusion and misunderstanding in the application of that term and in the assessment of the charge for such service. The Commission finally ruled that without specific qualification the term "reconsignment" includes changes in destination, routing or consignee; that if a carrier wishes to distinguish between such changes in its privileges or charges it must so specify in its tariff rules.⁸

§ 215. Legality of Transit Privileges.

¶ A. MILLING AND MANUFACTURING IN TRANSIT.

The Interstate Commerce Commission originally urged that the Act to Regulate Commerce does not sanction arrangements of this kind and early in its history it intimated that such might finally be its conclusion.⁹

Such practices were, however, in use to a considerable

⁶ Rule 74, Tariff Circular 17-A; Rule 72, Con. Rul. Bul. No. 4 (May 5, 1908).

⁷ *Beekman Lumber Company v. K. C. Ry. Co.* (1909), 17 I. C. C. R. 86.

⁸ See note 6, *supra*.

⁹ *Crews v. Richmond & D. R. Co.*, 1 I. C. C. R. 401; 1 I. C. R. 703.

extent at the time of the passage of the Act and since then they have become universal. To abrogate these privileges would be to confiscate thousands and probably millions of dollars in value, be rendering worthless, industrial plants, which have been constructed upon the faith of their continuation. Nor is it a forced construction of the statute to hold that when the product finally goes forward to the point of consumption it but completes the journey upon which it entered when the raw material was taken up. There can be no doubt that the application of this principle has cheapened the cost of transportation and probably of manufacture.¹⁰

The Commission finally held that cotton might be compressed in transit;¹¹ and no distinction can be made between this and most of the other arrangements that are in effect.¹²

It also held that a carrier may, as a part of a contract for through shipment, allow merchandise to be stopped off in transit for the purpose of undergoing treatment, such as grading, sorting, etc.;¹³ that a rule which provides that grain shipped through from point of origin to point of final destination may be stopped at an intermediate point for cleaning, sacking or other legitimate purpose, the shipment afterwards carrying a proportional or balance of a through rate; is not unlawful.¹⁴

It should be noted, however, that the third section of the Act to Regulate Commerce makes it unlawful for any common carrier, subject to its provisions, to make or give any undue or unreasonable preference or advantage to any particular description of traffic in any respect whatsoever. Although the sixth section of the Act provides that the schedules of rates of carriers shall plainly state all "privi-

¹⁰ See note 1, *supra*.

¹¹ In the Matter of Alleged Unlawful Rates in the Transportation of Cotton, etc. (1899); 8 I. C. C. R. 121.

¹² See note 1, *supra*.

¹³ See note 11, *supra*.

¹⁴ Re Rates and Practices of Mobile & Ohio Rd. Co. (1903), 9 I. C. C. R. 373.

leges of facilities granted or allowed;" just what is comprehended within those terms is not apparent.

¶ B. COMPRESSION OF COTTON IN TRANSIT.

The Federal Court held in *Cowan v. Bond*,¹⁵ that a railroad company is not guilty of an unlawful discrimination or preference in violation of Sections 2 and 3 of the Interstate Commerce Act by receiving cotton from a shipper at Delhi, La., shipping it to Vicksburg, having it compressed there at the company's expense and reshipped to eastern points, where such an arrangement is in compliance with a recognized custom, of which all other shippers, including the petitioner, could or did avail themselves, and where it does not appear that the petitioner desired to ship any cotton from Delhi to the eastern points, or that he was compelled to pay a higher rate under similar circumstances.

¶ C. ELEVATION, TRANSFER IN TRANSIT AND STORAGE.

The statute itself has been amended so as to include "transfer in transit," "storage," and "elevation" among the facilities of transportation which interstate carriers must or may provide for their shippers.¹⁶

It is clear that the law recognizes elevation as a facility which a carrier may provide for the benefit of its shippers if it finds it to its interest to do so as an inducement for shippers to send their traffic over its line.¹⁷

§ 216. Charges for Allowance of Transit Privileges.

¶ A. RIGHT OF CARRIER TO DEMAND COMPENSATION.

The stopping of a commodity in transit for the purpose of treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper cannot, in the present state of the law, demand as

¹⁵ *Cowan v. Bond*, 39 Fed. Rep. 55; 2 I. C. R. 542.

¹⁶ Act to Regulate Commerce. Section 1.

¹⁷ In the Matter of Allowances to Elevators by the Union Pacific Rd. Co. (1907), 12 I. C. C. R. 86.

a matter of lawful right, and the carrier may exact a reasonable charge for such privilege.¹⁸

The right of milling in transit is a special privilege for which carriers may demand extra compensation, and prescribe the terms and conditions thereof.¹⁹

The United States Supreme Court has decided that a carrier which is at service and expense in stopping goods in transit for inspection and reloading for the benefit of the shipper is entitled to compensation in addition to the actual expense incurred.²⁰ The Commission had held that a carrier might make a charge for the additional service performed in according a transit privilege, but that such charge must not exceed the actual cost to the carrier.²¹ The case was appealed to the Federal Court and both the Circuit Court and Circuit Court of Appeals sustained the decisions of the Commission, whereupon the decision was reversed by the Supreme Court.²²

¶ B. CHARGE FOR ALLOWANCE OF TRANSIT PRIVILEGE SHOULD BE COMMENSURATE WITH THE SERVICE PERFORMED BY THE CARRIER.

A carrier is not justified in making the same charge for every reconsignment. The privilege of reconsignment is a thing of value to the shipper and of expense to the carrier; therefore a charge may be made; but the value and extent of that service vary and the charge should be in proportion

¹⁸ *St. Louis Hay & Grain Co. v. M. & O. Rd. Co.*, 11 I. C. C. R. 90, citing *Diamond Mills v. B. & M. Rd. Co.*, 9 I. C. C. R. 311, *supra*.

¹⁹ *The Diamond Mills v. B. & M. Rd. Co.* (1902), 9 I. C. C. R. 311.

²⁰ *Southern Railway Co. v. St. Louis Hay & Grain Co.* (1909), 214 U. S. 297, 53 L. ed. 1004, 29 Sup. Ct. 678, reversing 153 Fed. Rep. 728, 82 C. C. A. 614 and 149 Fed. Rep. 609, affirming order of Commission in *St. Louis Hay & Grain Co. v. M. & O. Rd. Co. et al.*, 11 I. C. C. R. 90. In reversing the lower courts the case was remanded to the Circuit Court with instructions to send the matter back to the Commission for furthering investigations and report. The Supreme Court did not determine what would be a fair and reasonable charge for the reason that the testimony had not been preserved in the record.

²¹ *Ibid.*

²² *Ibid.*

to the service.²³ A charge that would be reasonable for a diversion or change of destination of a shipment, might be unreasonable when applied to a single change in consignee which did not involve a change in the destination or more expense in delivery.²⁴

¶ C. REASONABLENESS OF RECONSIGNMENT CHARGE.

One dollar per car is a reasonable reconsignment charge for the service where only the name of the consignee is changed and there is no change in destination.²⁵

The Commission has held that \$2.00 per car is a reasonable reconsignment charge for the privilege of changing the destination of the shipment, when the change was made before or immediately after the arrival of the car at the first destination, and when no back haul or out-of-line haul is required.²⁶

§ 217. "Floating" Cotton.

In the practice of "floating cotton," the essential transportation feature is carrying the cotton to a compress, receiving it again in the compressed state, and transporting it to destination at the through rate in force from the point of origin. The practice benefits both the railroad company and the producer, and tends to place noncompetitive points upon an equality with more distant competitive localities from which lower rates are in force. The cotton is graded as well as compressed at the point of stoppage. The destination of the cotton is usually changed at the compress point; the identity of a cotton shipment is not preserved at the point of grading and compression; and the ownership of the cotton may change at the compress station. The ques-

²³ See note 7, *supra*.

²⁴ See note 6, *supra*.

²⁵ See note 7, *supra*.

²⁶ *Cedar Hill C. & C. Co. v. C. & S. Ry. Co. et al.*, 15 I. C. C. R. 546 (1909); see also *Board of Trade of Kansas City v. C. B. & Q. Ry. Co. et al.* (1907), 12 I. C. C. R. 173, where \$2.00 per car was held not to be an unreasonable charge for the reconsignment of grain in view of the extra expense incurred and of the extra service performed by the railroads.

tion is whether the shipment is to be considered through and entitled to a through rate, or as local and calling for application of charges in effect to and from the compress point.

The Commission has held: (1) That the carrier may, as part of a contract for through shipment, allow the cotton to be stopped off for the purpose of grading and compression; but the privilege enters into and becomes part of the service covered by the rate, and should be specified in the published tariffs. (2) That the determinative feature of a through shipment is the contract, and if the cotton starts and proceeds upon a contract for through shipment, it may be considered as a through shipment and be given the benefit of a through rate.²⁷ The Commission in considering the practice of "floating cotton," said: "It is said that the identical cotton does not pass over the entire route, but that substitution takes place at the compress point. This is certainly true. If a carload of cotton leaves Hernando for Boston, it is quite probable that no single bale of that cotton ever goes to Boston. If the car in which it came to Grenada reaches that destination it is practically certain that it will be filled with other cotton, but is this in any way material? Every pound of Hernando cotton finally goes to some point beyond Grenada. It is true that a bale of cotton raised at Grenada may go from Grenada to Boston, by this process of substitution, at the Hernando rate, but in that event a corresponding amount of cotton from Hernando must go to some point upon the Grenada rate. However, it may be in theory, there can be in fact no discrimination. Grenada cotton is bought upon and has the benefit of the Grenada rate, and cannot possibly obtain the benefit of any other rate, and Hernando cotton must go to a point beyond Grenada at some published rate."²⁸

§ 218. Stopping Stock in Transit.

The privilege of stopping hogs in transit shipped from

²⁷ See note 11, *supra*.

²⁸ *Ibid*.

western points to the east in order that they may be sorted and reconsigned under the through rate from point of origin cannot be enforced against carriers in favor of any single point or shipper in the absence of lawfully established tariffs making such privilege open to the public at large.²⁹

In connection with the published privilege of feeding and grazing in transit a carrier may lawfully provide in its tariffs that it will furnish feed at current market prices, and bill the cost thereof, together with an addition of 10 percent or other reasonable percentage to cover the value of its service as advance charges.³⁰

§ 219. Allowance of Transit Privileges Optional with the Carrier.

Shippers are not entitled as matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; on the contrary, milling in transit is a special privilege which is only permitted by carriers under prescribed terms and conditions.³¹

A carrier, party to a joint tariff which does not give shippers the privilege of milling in transit, acted within its legal right in notifying its connections and the shipper that it would not permit the privilege.³²

§ 220. Shippers cannot demand Transit Privileges as a Matter of Right.

Shippers are not entitled as a matter of right to mill grain in transit and forward the milled product under the through rate in force on the grain from the point of origin to the place of ultimate destination; on the contrary, milling in transit is a special privilege for which extra compensation is usually exacted by carriers and which is only

²⁹ *Shiel & Co. v. Ill. Cent. Rd. Co. et al.* (1907), 12 I. C. C. R. 211.

³⁰ Rule 17, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

³¹ See note 19, *supra*.

³² *Ibid.*

permitted by them under prescribed terms and conditions;³³ but allowance of the privilege by a carrier to shippers in one section must be without wrongful prejudice to the rights of shippers in another section served by its line.³⁴

The stopping of a commodity in transit for the purpose of treatment or reconsignment is in the nature of a special privilege which the carrier may concede, but which the shipper cannot, in the present state of the law, demand as a lawful right.³⁵

The Commission has always regarded reconsignment as a privilege, not a right to be demanded by shippers, and has consistently refused, to extend the same except to correct unjust discrimination.³⁶

§ 221. Rate to be applied on the Reshipped Commodity under a Transit Privilege.

Transit privileges are allowed by carriers at many points by which commodities milled or merchandised at such points are treated as constructively in course of transportation while in the hands of the owners or millers. The object of this arrangement is to enable the shippers to receive the benefit of the through rates from the point of origin of such commodities to the final point of destination instead of requiring them to pay the rate to the milling or merchandising point plus the rate from such point; the sum of such rates being generally in excess of the through rate from first point of origin to point of final destination.

Rates frequently change while commodities are in a state of suspended transportation at the transit point. In such case it is necessary to determine whether or not the rate to be applied shall be that of the day of final shipment or that of the day of shipment from the first point of origin. The Commission has held that the through rates to be

³³ *Diamond Mills v. Boston & M. Rd. Co.* (1902), 9 I. C. C. R. 311.

³⁴ *Koch et al. v. P. R. R. Co. et al.* (1905), 10 I. C. R. 675.

³⁵ See note 18, *supra*.

³⁶ *Cedar Hill C. & C. Co. et al. v. C. & S. Ry. Co. et al.*, 16 I. C. C. R. 387.

charged for the transportation are the rates in effect at the time the shipment is first delivered to the carrier. Changes in rates do not affect shipments which are in course of transportation. Shippers delivering commodities to carriers are not subject to changes of rates by the carriers after the carriers take possession of the shipments and issue bills of lading.³⁷

§ 222. Shipment that moved In, under a Former Tariff, does not Lose the Benefit of Transit Privilege Cancelled pending the Out Movement.

A tariff enabled shippers to concentrate commodities on local rates at a certain point for shipment within a named period in carload lots, the inbound billing to be surrendered, and through rates from point of original shipment to apply. Before the period for taking advantage of this privilege had expired a new tariff made a new arrangement. *Held, That* with respect to shipments that had moved to the concentrating point under the old tariff and which moved out within the period allowed, the old rate should apply.³⁸

Where a shipment over a through route is stopped at an intermediate point under some tariff privilege, the local or proportional rate "in" cannot be absorbed, diminished or affected by any "out" rate not in effect at the time when the traffic moved upon such local or proportional rate.³⁹

§ 223. Transit Privilege not availed of cannot be renewed after the Expiration of the Time Allowed in the Tariffs.

Transit privileges are allowed upon the theory that the inbound shipment may be stopped and the identical freight or its product, or its exact equivalent of the same commodity moving into the transit point under the same privilege, may be shipped to ultimate destination under the through rate

³⁷ In *Re Milling-in-Transit Rates* (1908), 17 I. C. C. R. 113; see also *In the Matter of Through Routes and Through Rates*, 12 I. C. C. R. 163; and Rule 119, Con. Rul. Bul. No. 4.

³⁸ Rule 80, Con. Rul. Bul. No. 4 (June 9, 1908).

³⁹ *Re Through Routes and Through Rates* (1907), 12 I. C. C. R. 163.

from point of origin. If for any reason reshipment becomes impossible, the carrier is under no obligation to refund the charges collected for the movement to the transit point.^{39a}

The protection of the through rate depends entirely upon the shipper delivering the commodity for reshipment within the time named.^{39b}

A consignor of sheep, which were being grazed in transit, was unable, because of a severe snowstorm, to get the sheep to the station before the grazing privilege expired according to the published time limit. Upon inquiry of the carrier it was held that it cannot lawfully take the sheep forward on the rates which would have been applicable under the tariff had the sheep been shipped within the time limit.⁴⁰

§ 224. Substituting Tonnage at Transit Point.

A milling, storage, or cleaning-in-transit privilege cannot be justified on any theory except that the identical commodity or its exact equivalent, or its product, is finally forwarded from the transit point under the application of the through rate from original point of shipment. It is, therefore, not permissible at transit point to forward on transit rate commodity that did not move into transit point on transit rate, or to substitute a commodity originating in one territory for the same or like commodity moving into transit point from another territory, or to make any substitution that would impair the integrity of the through rate. It is not practicable to require that the identity of each carload of grain, lumber, salt, etc., be preserved, but, in the opinion of the Commission, it is not possible to lawfully substitute at the transit point any commodity of a different kind from that which has moved into such transit point under a transit rate or rule. This is to say, oats or the products of

^{39a} Anderson, Clayton & Co. v. St. L. & S. F. R. R. Co., 17 I. C. C. R. 12, cited in Henderson & Barkdull v. St. L. I. M. & S. Ry. Co. (1910), 18 I. C. C. R. 514.

^{39b} Henderson & Barkdull v. St. L. I. M. & S. Ry. Co. (1910), 18 I. C. C. R. 514.

⁴⁰ Rule 53, Con. Rul. Bul. No. 4 (March 11, 1908).

oats may not be substituted for corn, corn or the products of corn for wheat, nor wheat or the products of wheat for barley, nor may shingles be substituted for lumber, or lumber for shingles, nor may rock salt be substituted for fine salt, nor fine salt for rock salt; likewise oak lumber may not be substituted for maple lumber, nor pine lumber for either oak or maple, nor may hard wheat, soft wheat, or spring wheat be substituted either for the other. These illustrations are given not as covering the entire field of possible abuses, but as indicating the view which the Commission will take of such abuses as they arise.⁴¹

The Commission held that, to the end that abuses now existing at transit points may be eliminated, carriers will be expected to conform their transit rules and their billing to the suggestions of this rule. In the event of the failure of any carrier so to do, reductions of legal rates caused by transit abuses will be regarded as voluntary concessions from legal rates.⁴²

A shipper proposed a tariff rule authorizing carload shipments of lime originating at eastern points to be stopped at Omaha, where a part of the contents could be unloaded and an equivalent tonnage of cement or plaster substituted, the charges to final destination to be assessed in accordance with the rate on lime from the original point of origin. *Held*, That the proposed rule would be unlawful.⁴³

§ 225. Transit Privileges will not be given a Retroactive Effect.

A shipment consigned to one point was reconsigned en route to another, the tariff containing no reconsignment privilege. As a consequence local rates to and from the reconsigning point were applied and made higher than the through rate. *Held*, Under subsequent tariff that did not reduce rates,

⁴¹ Rule 76, Tariff Circular 17-A (June 29, 1909); Rule 203, Con. Rul. Bul. No. 4, confirmed, In the Matter of Substitution of Tonnage at Transit Points (1910) 18 I. C. C. R. 280.

⁴² *Ibid*.

⁴³ Rule 181, Con. Rul. Bul. No. 4 (June 7, 1909).

but incorporated a reconsignment privilege, that the benefit of such privilege could not be applied retroactively to a previous shipment and cannot be accepted as the basis for a refund on special reparation docket.⁴⁴

The above rule is held to include cleaning, milling, concentration, and other transit privileges.⁴⁵

In the case of the *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co. et al.*,⁴⁶ the Commission stated, that it had consistently held in the past that it could not, with propriety, make a reconsignment privilege retroactive in practical effect by ordering reparation on a shipment made at a time when the same was not available, the basis of such reparation being the non-availability of such privilege at the time shipments moved and the subsequent publication of the same. It seems clear that the privilege as published in tariffs in effect at the time the shipment in question moved was not applicable thereon because of one of the essential conditions under which that privilege was to be had, to wit, that the reconsignments should be accomplished within seventy-two hours after arrival of the shipment at first destination, was not met.

§ 226. Milling Timber in Transit where the Road hauling the Raw Material is Owned or Controlled by the Mill Owner.

The Commission has held that the transportation of the log to the mill by one line and the transportation of the lumber from the mill by another line, may be treated as in the nature of a through shipment from the point where the log is received to the point where the lumber is finally delivered, and the carrier of the lumber may by joint arrangement with the log carrier make such allowance towards the cost of moving the log as would be fairly involved in moving

⁴⁴ Rule 6, Con. Rul. Bul. No. 4 (Nov. 11, 1907); Rule 166, Con. Rul. Bul. No. 4.

⁴⁵ Rule 77, Con. Rul. Bul. No. 4 (May 14, 1908).

⁴⁶ *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co. et al.*, 16 I. C. C. R. 558.

the lumber from the point where the log is received for carriage, provided that the carrier of the log is a common carrier by rail; but that this extends the application of the principal of milling in transit to the extreme limit.⁴⁷

§ 227. Reconignment on Shipper's Order of Part Lots of Consignments of Goods Held in Storage.

The distribution and reconignment of part lots of goods held in store by the carrier is of considerable importance and value to shippers and especially so to the class of manufacturers or dealers largely engaged in supplying those staple commodities which are in common demand throughout the country. To the extent of its value, each privilege lessens the aggregate compensation paid by shippers to carriers for transportation and terminal services.

The function of the carrier is to receive, transport and deliver. As a rule, it can only be forced into the position of warehouseman through lack of diligence on the part of the consignee in the removal of his property. With no general duty to act as a warehouseman for indefinite periods in connection with its primary obligations as a common carrier, it can not assume to provide shippers at all times and upon the same terms and notifying the public thereof in the manner provided by law. Distributing consignments held in store, suspending collection of charges for use of cars beyond specified reasonable periods of time after such cars have been placed for loading or unloading by shippers or consignees, and all kindred concessions, come within the same requirements of impartiality and publication.⁴⁸

§ 228. Free Storage creating Distributing Point for Private Industry.

Its attention being called to a tariff which, in effect, created a distributing point for a special industry by granting it free storage at that point, either in its own or the

⁴⁷ See note 1, *supra*.

⁴⁸ *American Warehousemen's Association v. Ill. Cent. Rd. Co. et al.* (1898), 7 I. C. C. R. 556.

carrier's warehouses, and practically without limit as to time, the merchandise when shipped out to go on the balance of through rate, the Commission expressed its disapproval.⁴⁹

§ 229. Reconsignment Rate Higher than the Proportion of the Through Rate.

In the case of *The St. Louis Hay & Grain Co. v. The Illinois Central Rd. Co. et al.*,⁵⁰ it was shown that the service of defendants in handling reconsigned hay at and from East St. Louis was more expensive as a general rule, if not invariably, than the service performed in case of shipments through East St. Louis, while the privilege of reconsigning hay from that point at a charge less than the established local rate was of substantial value to dealers in that city. The Commission held, that the fact that through rates were less than the sum of local in and out rates was not of itself a valid ground of objection, nor was it unlawful for the defendants to maintain reconsignment rates which were higher in some cases than their proportions of through rates; that the fact that the reconsignment rate is sometimes the same as the proportion of the through rates does not warrant an inference of illegal conduct or support a charge of unjust discrimination.

§ 230. Reshipping Rate from Primary Grain Market.

May a carrier cancel its local reconsigning, proportional, and other rates, on outbound shipments of grain from a primary market like Kansas City, Mo., where no grain originates upon which the local rate would be applicable and substitute for them a reshipping rate applicable on all outbound grain? Responding to the inquiry, the Commission approved the suggestion, but declined in advance to express approval of such reshipping rate when it makes less than the published rate from an intermediate point.⁵¹

⁴⁹ Rule 5, Con. Rul. Bul. No. 4 (Nov. 11, 1907).

⁵⁰ *St. Louis Hay & Grain Co. v. Ill. Cent. Rd. Co. et al.* (1905), 11 l. C. C. R. 486.

⁵¹ Rule 57, Con. Rul. Bul. No. 4 (April 7, 1908).

§ 231. Reconsignment of Shipments refused by Consignees or damaged in Transit.

¶ A. IN GENERAL.

In one form or another many carriers provide for the return free or at reduced rates, or the reconsignment under through rate from point of origin, of shipments that are damaged in transit or are refused by consignees. In answer to request for a ruling the Commission expressed the opinion that in a nondiscriminatory way and within reasonable limits such rule is not unlawful or improper.⁵² Care should be taken to preserve the distinction between shipments in which the carrier has no interest, except the collection of the transportation charges, and which are reconsigned or returned purely out of consideration for the interests of the owner of the shipment and shipments which, because of injury or damage in transit, are left on the carrier's hands and in which it has an interest to the extent of the transportation charges and the value of the shipment.⁵³

¶ B. SHIPMENTS REFUSED BY CONSIGNEE.

A rule providing that shipments which are refused by consignee may be reconsigned and forwarded, under application of through rate from the point of origin to final destination, either with or without the exaction of a reconsignment charge, is permissible.⁵⁴ Where the tariff provides for the return of shipments at reduced rates the tariff rule must be strictly complied with. Such tariff rule should provide that the waybill covering the return movement and shipping receipt must show reference to the original outbound shipment and waybill.⁵⁵

¶ C. SHIPMENTS DAMAGED IN TRANSIT.

A rule providing for the reconsignment and return free or

⁵² Rule 67, Tariff Circular 17-A.

⁵³ Rule 67, Tariff Circular 17-A.

⁵⁴ Ibid.

⁵⁵ Ibid.

at reduced rates of articles damaged in transit is not improper if it is so framed and applied as to prevent abuses or improper practices under it. The practice of returning at reduced rates articles that have been delivered into the possession of consignees and have become shopworn or have gotten into a state of disrepair through use, is neither proper nor free from unjust discrimination.⁵⁶ A rule according reduced rates or return shipments is proper only in so far as it applies to the return shipments that are received by the consignee in bad order or are refused by consignee without examination.⁵⁷

As to shipments that are not in closed packages and thus are open to immediate inspection, the rule should provide that in order to secure reduced rates on the return movement the goods shall not have left the possession of the carrier before such claim is made.⁵⁸ As to goods that are in closed packages, the rule should provide that in order to secure reduced rates on return movement such goods must be returned to the carrier within ten days.⁵⁹

¶ D. RULES MUST BE PUBLISHED AND APPLIED ONLY VIA THE
ROUTE OVER WHICH SHIPMENT MOVED.

The foregoing rules must be in tariffs and must be applied without discrimination and should provide that the rule for the return of shipments applies only via the route and line over which the shipment moved.⁶⁰ Uniformity among carriers in rules and practices in such matters as these is desirable and contributes to thorough understanding and harmony between carriers and shippers.⁶¹

§ 232. Contract with Shipper for Allowance of Transit Privileges.

See *Section 415, post.*

⁵⁶ Rule 67, Tariff Circular 17-A.

⁵⁷ *Ibid.*

⁵⁸ Rule 67, Tariff Circular, 17-A.

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

§ 233. Reconsignment Rules subject to Cancellation at Option of Carrier Unlawful.

Reconsignment rules required to be signed by the shipper and subject to cancellation at the option of the carrier are inconsistent with the law governing the establishment and modification of tariff schedules.⁶²

§ 234. Publication of Transit Privileges and Rules and Regulations Affecting the Same.

See *Section 461, post.*

§ 235. Discrimination in the Allowance of Transit Privileges.

See *Section 374, post.*

§ 236. Jurisdiction of the Commission over Transit Privileges.

¶ A. COMMISSION NO POWER TO AUTHORIZE TRANSIT PRIVILEGES.

The Act to Regulate Commerce confers no authority upon the Commission to require carriers to accord milling-in-transit privileges.⁶³

The Commission has no authority to order a carrier to grant to shippers the privilege of "milling-in-transit."⁶⁴

However, there can be no question as to the right and power of the Commission to order the removal of an unjust discrimination in the application of such a privilege and to prescribe such reasonable rates and regulations as will effect such removal.⁶⁵

¶ B. WHEN RECONSIGNMENT PRIVILEGE IS SUBJECT TO JURISDICTION OF COMMISSION AND ACT TO REGULATE COMMERCE.

The validity of all charges for services rendered in con-

⁶² Kile & Morgan Co. v. Deepwater Ry. Co. et al. (1909), 15 I. C. C. R. 235

⁶³ See note 33, *supra*.

⁶⁴ Re St. Louis Millers' Assn. (1887), 1 I. C. C. R. 20; 1 I. C. R. 22.

⁶⁵ Douglas & Co. v. C. R. I. & P. Ry. Co. et al., 16 I. C. C. R. 233.

nection with interstate transportation is vested exclusively in the Interstate Commerce Commission and the Courts of the United States, and the validity of the "reconsignment charge" for transferring freight brought into the State by a railroad running from without the State and there transferred to another line, or after its delivery on a "hold" track to the consignee elsewhere in the city as directed by the express provision of the Interstate Commerce Act, is to be determined by such Federal authority and not by the State Courts,⁶⁶ and *quo warranto* will not lie to prevent the carrier from making a charge for such service.⁶⁷

¶ C. WHEN RECONSIGNMENT CHARGE IS NOT SUBJECT TO THE JURISDICTION OF THE COMMISSION OR ACT TO REGULATE COMMERCE.

When a carload of hay destined to East St. Louis, Ill., is delivered by the carrier at a warehouse designated by the shipper or consignee prior to arrival in that city, or to the proper switching road, or is placed upon the team track of the carrier, if no specific delivery is named, the car has been properly delivered and the carrier may insist that the consignee shall accept such delivery and in case the consignee intercepts and sells the carload while upon a hold track, after arrival at East St. Louis, but before such delivery, he thereby accepts delivery. If the consignee, instead of removing the hay from the car so delivered sells it to another party, and a carrier, upon an order of the original consignee or of his customer, moves the car to such customer's storehouse in East St. Louis, that is a new and independent service or reconsignment performed entirely within the State of Illinois, of which the Interstate Commerce Commission has no jurisdiction. The Commission, however, considered that Congress might, directly or through the Commission, require that shippers shall be allowed a certain time after arrival

⁶⁶ The State ex. inf. Crow, Attorney General, v. Atchison, Topeka & Santa Fe Ry. Co. (1903), 176 Mo. 687; 75 S. W. 776; 63 L. R. A. 761.

⁶⁷ Ibid.

in East St. Louis to designate the point of delivery for interstate shipments, and that such delivery be made accordingly.⁶⁸

The intention or purpose of the owners of an interstate shipment of a carload of grain to forward such car from the original terminal point to another point in the same State does not make the shipment between such two points, when performed by a connecting carrier to which the car was delivered by the original terminal carrier in obedience to the instructions of the owner, an interstate one, and, as such, exempt from the regulations of the State Railroad Commission.⁶⁹

¶ D. JURISDICTION OF COMMISSION OVER COMPRESSION OF COTTON.

The question of compression of cotton in transit is not one with which a railroad may deal entirely as it sees fit and without respect to the effect which its practices have upon the transportation of cotton. Either the carrier must publish a rate upon uncompressed cotton and another rate upon compressed cotton and divorce itself entirely from the matter of compression, or else such compression as is given by the railroad becomes subject to the jurisdiction of the Commission.⁷⁰

⁶⁸ St. Louis Hay & Grain Co. v. C. B. & Q. Ry. Co. et al. (1905), 11 I. C. C. R. 82.

⁶⁹ Gulf, C. & S. F. Ry. Co. v. Texas (1907), 204 U. S. 403, 51 L. ed. 540; 27 Sup. Ct. Rep. 360, affirming 97 Texas, 274, 78 S. W. 495.

⁷⁰ Muskogee Commercial Club v. M. K. & T. Ry. Co. (1907), 12 I. C. C. R. 312.

CHAPTER XV.

ELEVATION.

SECTION

237. Nature of Elevation.

238. Duty of Carrier to furnish Elevation.

239. Right of Carrier to Procure Elevation Facilities from Other Sources.

240. Right of Carrier to make a Charge for Elevation.

241. Allowance by Carriers for Elevation Service.

§ 237. Nature of Elevation.

Elevation, as commonly understood among elevator men and among buyers and sellers of grain, signifies the unloading of grain from cars, or from grain-carrying vessels, into a grain elevator and loading it out again after being held for a period of not to exceed ten days.¹ The "treatment," of grading, cleaning and clipping of grain is not properly a part of "elevation" as that word is strictly used, and the retention of grain in an elevator beyond the period of ten days becomes storage and is not elevation.²

It is in this sense that the word is used in the amended statute.³ Harlan, *Commissioner*, has defined the term "elevation" to mean substantially a transfer of the grain from the car of the inbound carrier through an elevator to the car of the outbound carrier within a period of ten days.⁴

The service of elevation pertains entirely to the *transportation* of the grain.⁵ It certainly does not mean more than a mere transfer or temporary storage of the grain in

¹ In the Matter of Allowances to Elevators by the Union Pacific Rd. Co. (1907), 12 I. C. C. R. 86.

² *Ibid.*

³ *Ibid.*

⁴ Traffic Bureau, Merchants' Exchange, etc., v. C. B. & Q. Rd. Co. et al. (1908), 14 I. C. C. R. 317.

⁵ *Ibid.*

transit, as is incident and necessary to the movement and preservation of the grain. Surely it was not the intention of Congress to impose upon common carriers the duty of providing facilities for the transaction of the grain dealers' business in express preference to dealers in other commodities. The *mixing* of grain is said to be one of the largest sources of profit to a grain dealer. By mixing a carload of inferior grain with a carload of grain of higher grade the aggregate value of the two carloads is increased and the dealer's profits from the sale are larger than they would be if the two carloads were sold separately.

The *storage* of grain beyond the elevation period of ten days is also of commercial value to the grain dealers. The "*treatment*" of grain is of advantage to them in that it results in enhancing its value. *Weighing* and *inspection* are also of advantage to the owner of the grain.⁶ Such services are *commercial* services and are in no sense a part of elevation as defined in the Act to Regulate Commerce.⁷ They are not an incident of *transportation*, nor are they performed for the benefit of the carrier. They are a part of the grain dealer's business, are for his benefit, and are of value to him, and cannot therefore be classed under elevation or demanded as such.

§ 238. Duty of Carrier to furnish Elevation.

The Act to Regulate Commerce as changed by the Hepburn Amendment of June 29, 1906, after defining the term "*transportation*" to include "all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation and transfer in transit * * * storage and hauling of property transported," declares that it shall be the duty of every carrier subject to the provisions of the Act to provide and furnish such *transportation* upon reasonable request therefor,

⁶ In the Matter of Allowances to Elevators by the Union Pacific Rd. Co. (1908), 14 I. C. C. R. 315.

⁷ *Ibid.*

and to establish through routes and just and reasonable rates applicable thereto.⁸

The Act (as changed by the amendment of June 18, 1910), also, makes it the duty of every carrier to provide *reasonable facilities* for operating such through routes.^{8a}

Elevation facilities are absolutely essential to the proper handling of grain. There must be the country elevator and the terminal elevator, and it is for the interest of all parties—producer, carrier and consumer—that these facilities be ample. In no other way can the farmer dispose of his product and obtain his money for it when he desires. In no other way can the railroad economically handle this grain from the producer to its final destination.⁹

§ 239. Right of Carrier to Procure Elevation Facilities from Other Sources.

It being the duty of carriers under the law to provide elevation it is not to be doubted that a railroad company may either construct and operate an elevator of its own, or may furnish elevation facilities to its shippers by making an arrangement with the owner of an elevator for such a service.¹⁰ It is without doubt the right of a carrier to provide storage facilities into which its cars can be unloaded and thereby promptly released. The carrier may, without question, provide for the transfer of grain from its own cars to the cars of its connection when that is necessary to complete a through shipment.¹¹ It can provide these facilities either by an outlay upon its own part or by contracting for the performance of the service at so much per bushel.¹² This service pertains entirely to the transportation of the grain. The shipper has no possible interest in it and it is entirely immaterial to him by what means that is effected, provided the service of transportation be properly performed.¹³

⁸ Act to Regulate Commerce, Section 1.

^{8a} Ibid.

⁹ See note 4, *supra*.

¹⁰ See note 1, *supra*.

¹¹ See note 4, *supra*.

¹² See note 4, *supra*.

¹³ See note 4, *supra*.

§ 240. Right of Carrier to make a Charge for Elevation.

The first section of the Act to Regulate Commerce which defines the term transportation to include elevation and storage and makes it the duty of the carrier to establish just and reasonable rates applicable thereto, recognizes the right of the carrier to make a charge for elevation service the same as any other service connected with transportation of property.

§ 241. Allowance by Carriers for Elevation Service.**¶ A. WHERE THE OWNER OF THE ELEVATOR HAS NO INTEREST IN THE GRAIN.**

As stated elsewhere, a railroad company under the law may, without doubt, either construct and operate an elevator of its own, or may furnish elevation facilities to its shippers by making an arrangement with the owner of an elevator for such a service.¹⁴ It may contract for such service at so much per bushel or otherwise. Such an arrangement, of course, like every other arrangement whereby a carrier obtains transportation facilities and instrumentalities, is a matter of contract between the carrier and the owner of the elevator. The amount of compensation or allowance that may be paid to the owner for rendering such a service is not a matter of concern either to the shippers or to other carriers, unless in some way it enters into the rates charged on the grain traffic and thus makes the rates excessive, or unless by some device a portion of the allowance is returned to shippers and thus becomes a rebate.¹⁵

¶ B. WHERE THE OWNER OF THE ELEVATOR IS THE OWNER OF THE GRAIN.

The statute provides that if the owner of property transported under the Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable.¹⁶ This

¹⁴ See note 1, supra.

¹⁵ See note 1, supra.

¹⁶ Act to Regulate Commerce. Section 15.

provision applies to elevation facilities furnished by the shipper as well as to any other facility or instrumentality furnished or service rendered for which the carrier may reimburse him. But while it is true that under the law the shipper may receive, in the rates charged, a "just and reasonable" allowance from a carrier for any service or instrumentality furnished by him in connection with the *transportation* of his own property, yet that provision of the statute must be read in connection with the other provisions of the law forbidding and making unlawful any arrangement or practice that results in an undue preference or an unjust discrimination in favor of one shipper as against others, or that results in a rebate or other departure from the lawfully published rates. And, therefore, if the allowance involves a profit over and above the actual cost of the service rendered, it becomes, when made to a shipper, a rebate and an unlawful discrimination to the extent of the profit realized. It is not a rebate when it does not exceed the actual cost. But to avoid that fundamental objection the actual cost of the service rendered must be the limit of the allowance.¹⁷

As has been stated elsewhere the term "elevation" applies strictly to the service of transportation and in no sense to commercial services; therefore an allowance by a railroad company to shippers, under a contract between them, when made on their own grain which has been mixed, treated, stored, weighed or inspected in an elevator belonging to such shippers, or which has been shipped out of any of their elevators more than ten days after its receipt therein, amounts *pro tanto* to a contribution by the railroad company to the shippers of the cost of securing the commercial benefits growing out of the mixing, treating, storing, weighing or inspection of their grain, and is an undue preference and therefore unlawful.¹⁸ The owner is not permitted to use the elevation as a transit privilege for himself by means of which to secure commercial advantages on his own grain.¹⁹

¹⁷ See note 1, *supra*. See *Gund v. C. B. & Q. Rd. Co.* (1910), 18 I. C. C. R. 364.

¹⁸ See note 6, *supra*.

¹⁹ See note 4, *supra*.

CHAPTER XVI.

CONTRACTS BETWEEN CARRIERS AND SHIPPERS AND THE PUBLIC IN GENERAL.

SECTION

- 242. Contract between Carrier and Shipper for Different Freight Rate than that published in Tariff, Invalid.
- 243. Ignorance of Shipper as to the published Rate does not validate a Contract for a Lower Rate.
- 244. Mistake by Carrier's Agent in quoting Rate to the Shipper.
- 245. Duty of Carriers to Quote Rates to Shippers.
- 246. Contract to maintain Established Rate ineffective after Higher Rate established.
- 247. Special Understanding between Shippers and Carriers not published in their Tariffs, of no valid Effect.
- 248. Leasing Carrier's Property in Consideration of Lessee's Shipments.
- 249. Contracts of Shipment.
- 250. Contracts entered into prior to the Passage of the Act for Free Transportation based upon moneyed or other valuable Consideration.
- 251. Commission no Authority to compel Performance of Contracts.
- 252. Statute does not take away Carrier's Common-Law Right to Contract.
- 253. Status of Contracts for Special Rates entered into before Passage of the Act.
- 254. State Statutes relating to Contracts between Carriers and Shippers.

§ 242. Contract between Carrier and Shipper for Different Freight Rate than that published in Tariff, Invalid.

“The theory of the common law permitted carriers to make private contracts for transportation, which contracts were evidenced by the bills of lading given to the shippers. Under this practice charges varied as between shippers, and the fullest freedom was exercised to ‘trade’ in transportation. The abuses arising under such conditions led to the enactment of the act to regulate commerce. Thenceforth the rates to be charged for transportation were removed from the field of

barter and became matters of legal regulation. The bill of lading became at once little more than a receipt for the goods to be transported, into which could be legally incorporated nothing obnoxious to the law. It was therefore placed beyond the power of the agent of a corporation carrier, or of any other officer thereof, to bind the carrier to any rate other than that applicable, under the filed tariffs, to the traffic accepted for transportation. This is necessarily so, else the purpose of the law could be set aside at will by any agent who might choose to favor or to injure a shipper. The shipper obtains transportation by right of law, and the rate charged is not the result of contract, but is fixed and determined under a required legal form.¹

"In support of this view we find the decisions to be imperative that every carrier, subject to the act to regulate commerce, must charge the rate shown in its published tariffs, even though (1) a different rate be shown in the bill of lading, or (2) a different rate be quoted to the shipper by the agent of the railroad, or (3) a different rate be agreed to by both carrier and shipper in a written contract, or (4) a different rate be declared by the courts to be the reasonable rate.

"(1) In *G., C. & S. F. Ry. Co. v. Hefley*,² the Supreme Court of the United States decided that on an interstate shipment the carrier must collect the rate named in its regularly published tariff, even though the lower rate had been named in the bill of lading. This case arose in Texas, in which state a statute made it unlawful for a railroad company in that state to charge a greater sum for transportation of freight than the sum specified in the bill of lading. The Supreme Court held that under the act to regulate commerce the published tariff must be observed, and that the Texas statute must give way as to all interstate shipments.

"(2) In *T. & P. Ry. Co. v. Mugg*,³ the Supreme Court re-

¹ *Blinn Lumber Co. v. Southern Pacific Co. et al.* (1910), 18 I. C. C. R. 430.

² *G., C. & S. F. Ry. Co. v. Hefley*, 158 U. S. 98, 39 L. ed. 910, 15 Sup. Ct. Rep. 802.

³ *T. & P. Ry. Co. v. Mugg*, 202 U. S. 242, 51 L. ed. 553, 27 Sup. Ct. Rep. 350.

affirmed the decision in the *Hefley* case and applied it to a case in which the agent of the railroad at the point of shipment had quoted to the shipper a lower rate than the one set forth in the published tariffs. It was again decided that the incorrect quotation did not serve to vary the published tariff or to give the shipper a right to forward goods at the lower rate.

“(3) In *Armour Packing Co. v. United States*⁴ it was expressly held that a written contract for a rate lower than the published tariff could not be observed by the parties without making them criminally liable for breach of the act to regulate commerce. This case is made the stronger by the fact that the contract was legal at the time it was made, the rate named in it being according to the then legally published tariffs of the carrier. These tariffs were afterwards amended by the carrier, and an increased rate named. The court held that the amendment to the tariff would supersede the contract, and heavily fined the shipper who shipped under the contract after the tariffs had been amended.

“(4) In *T. & P. Ry. Co. v. Abilene Cotton Oil Co.*⁵ it was held that even the fact that the rate named in the published tariff is unreasonable in amount, and has been so declared by a court, will not justify the carrier in paying or the shipper in receiving a refund or reduction from such rate. As in the other cases cited above, the court held that the published rate must be enforced upon all alike until it has been changed in the manner provided by the act to regulate commerce, and that proceedings to have a published rate declared unreasonable in amount must be brought in the first instance before the Interstate Commerce Commission.

“It thus appears that the rates named in published tariffs may not, so far as interstate shipments are concerned, be varied by any arrangement between shippers and carriers, whether oral or written, or by state legislation or by court.

⁴ *Armour Packing Co. v. United States*, 209 U. S. 56, 52 L. ed. 681, 28 Sup. Ct. Rep. 428.

⁵ *T. & P. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350.

proceedings, except as such proceedings may be necessary under the act after an order has been made by the Commission.”⁶

The published rate governing interstate transportation between two given points, so long as it remains uncanceled, is as fixed and unalterable either by the shipper or by the carrier as if that particular rate had been established by a special act of Congress. When regularly published, it is no longer the rate imposed by the carrier, but the rate imposed by the law.⁷ This principle has been upheld in a number of actions in the State Courts,⁸ as well as by the United States Supreme Court in the above cited cases, and by the Commission.^{8a}

The failure on the part of the shipper to pay or of the carrier to collect the full charges, based upon the lawfully published rate, for the particular movement between two given points, constitutes a breach of the law and will subject either one or the other, and sometimes both, to its penalties.^{8b}

§ 243. Ignorance of Shipper as to the published Rate does not validate a Contract for a Lower Rate.

One obtaining from a common carrier transportation of goods from one State to another at a rate specified in the bill of lading, less than the schedule rate published and approved and in force at the time, *whether he does or does*

⁶ See note 1, *supra*.

⁷ Poor Grain Co. v. C. B. & Q. Ry. Co. (1907), 12 I. C. C. R. 418.

⁸ Southern Ry. Co. v. Wilcox (1901), 99 Va. 394; 39 S. E. 144; M. K. & T. Ry. Co. v. Bowles (1897), 1 Ind. Terr. 250; 40 S. W. 899; M. K. & T. Ry. Co. v. Stoner (1893), 5 Tex. Civ. App. 50; 23 S. W. 1020; Southern Ry. Co. v. Harrison (1898), 119 Ala. 539; 24 So. 552, 72 Am. St. 936, 43 L. R. A. 385; Kizer v. Texarkana & Ft. S. Ry. Co. (1899), 66 Ark. 348; 50 S. W. 871; S. F. & W. Ry. Co. v. Bundick (1894), 94 Ga. 775; 21 S. E. 995; St. L. & S. F. Rd. Co. v. Ostrander (1899), 66 Ark. 567; 52 S. W. 435; S. A. & A. P. Ry. Co. v. Clements (1899), 20 Tex. Civ. App. 498; 49 S. W. 913; Gerber v. Wabash Rd. Co. (1895), 63 Mo. App. 145; 5 I. C. R. 458.

^{8a} Duncan v. A. T. & S. F. Ry. Co. (1893), 6 I. C. C. R. 85; 4 I. C. R. 385; Red Cloud Mining Co. v. Sou. Pac. Co. (1902), 9 I. C. C. R. 216.

^{8b} See note 7, *supra*.



not know the rate is less than the schedule rate, is not entitled to recover the goods, or damages for their detention upon tendering payment of the amount specified in the bill of lading, or of any sum less than the published charges.^{8c}

Whatever rate may be agreed upon, the carrier's lien on the goods is, by force of the Interstate Commerce Law the amount fixed by the published schedule of rates and charges, and this lien can be discharged, and the consignee become entitled to the goods, only by payment or tender of such amount.^{8d}

§ 244. Mistake by Carrier's Agent in quoting Rate to the Shipper.

In the case of *Poor Grain Co. v. C., B. & Q. Ry. Co. et al.*,⁹ Mr. Commissioner Harlan, said:

"Under the decisions of the Supreme Court of the United States in *Texas & Pacific Ry. Co. v. Mugg*,¹⁰ and *Gulf, Colorado & Santa Fe Ry. v. Hefley*,¹¹ the question of the liability of carriers for the mistakes of their agents in quoting freight rates to shippers seems not to be open to further discussion. In the former case an agent of the railway company, who ought to have been advised of the lawful rate, inadvertently quoted to the plaintiff a rate on a shipment then in contemplation that was lower than the published rate; in the latter case an agent of the defendant railroad company not only named

^{8c} *Texas & Pacific Ry. Co. v. Mugg* (1906), 202 U. S. 242; 26 Sup. Ct. Rep. 628; 50 L. ed. 1011, applying *Gulf, Colorado & Santa Fe Ry. Co. v. Hefley*, 158 U. S. 98; 39 L. ed. 910; 15 Sup. Ct. Rep. 802; see also *A. T. & S. F. Ry. Co. v. Holmes* (1907), 18 Okl. 92; 90 Pac. 22; *Southern Ry. v. Harrison*, 119 Alabama 539, 24 So. 552, 72 Am. St. 936, 43 L. R. A. 385.

^{8d} *Ibid.*

⁹ *Poor Grain Co. v. C. B. & Q. Ry. Co. et al.* (1907), 12 I. C. C. R. 418; see also *Suffern, Hunt & Co. v. I. D. & W. Ry.* (1897), 7 I. C. C. 255; *C. R. I. & P. Ry. Co. v. Hubbell* (1894), 54 Kansas 232; 38 Pacific 236; *Beatrice Creamery Co. et al. v. Ill. Cent. Rd. Co. et al.*, 15 I. C. C. R. 109.

¹⁰ See note 7, *supra*.

¹¹ *Ibid.*

to the plaintiff a rate lower than the lawfully published rate, but inserted the erroneous lower rate in the bill of lading, that was issued for the movement. In each case the Supreme Court of the United States held that the published tariff controlled, and that the lawfully published rate was the rate to be applied and collected on the shipment, notwithstanding the erroneous quotation of another and lower rate.

“And of necessity no other conclusion was possible if the integrity of this regulative legislation is to be preserved. If a mistake in naming a rate between two given points is to be accepted as requiring the application of that rate by the carrier, the great principle of equality in rates, to secure which was the very purpose and object of the enactment of these several statutes, might as well be abandoned. If the act of a railroad clerk, whether through mistake or otherwise, in quoting a less than the lawful rate or inserting a lower rate in a bill of lading is to be held to require or to justify and excuse the substitution of that rate on a particular shipment for the lawfully published rate, the effectiveness of such legislation is at an end and its whole purpose destroyed. For past experience shows that billing clerks and other agents of the carriers might easily become experts in the making of errors and mistakes in the quotation of rates to favored shippers, while other shippers, less fortunate in their relation with carriers and whose traffic is less important would be compelled to pay the higher published rates.

“Stability and equality of rates are more important to commercial interests than reduced rates. It was instability and inequality that were the special evils to be remedied; it was the possibility that one shipper, in one way or another, whether by mistake or otherwise, could, and actually did, get a lower rate than another shipper that led to more stringent legislation. That evil the present amended statute meets in substantially the language of previous legislation. The provision of Section 6 of the Act is as follows:

"Nor shall any carrier change or demand or collect or receive a greater or less or different compensation * * * than the rates, fares, and charges which are specified in the tariff filed and in effect at the time.

"This clause, heretofore ineffective in sustaining the published rate and preventing rebates, is now supported by strong provisions elsewhere in the same Act and by provisions even more drastic in the so-called Elkins Act as amended, which define any departure or variation from the published schedule as a misdemeanor punishable by severe fines and, under some circumstances, by imprisonment. Under the force of these enactments the published rate has taken on a fixed and rigid character that does not permit it to yield to either importunity or to mistake. And the giving of rebates, if not absolutely at an end in isolated cases, is at least no longer a practice in interstate transportation. In this respect the published rate has become a protection to shippers and to carriers alike. Regardless of the rate quoted or inserted in a bill of lading, the published rate must be paid by the shipper and actually collected by the carrier. The failure on the part of the shipper to pay or of the carrier to collect the full freight charges, based upon the lawfully published rate for the particular movement between two given points, constitutes a breach of the law and will subject either one or the other, and sometimes both, to its penalties. In other words, although a rate between two given points is established in the first instance by the voluntary act of the carrier in filing and posting it in the manner required by law, and in the same manner may be cancelled by the carrier and another rate substituted, nevertheless, when once lawfully published, a rate, so long as it remains uncanceled, is as fixed and unalterable either by the shipper or by the carrier as if that particular rate had been established by a special Act of the Congress. When regularly published it is no longer the rate imposed by the carrier, but the rate imposed by the law. The law governing transportation between the two points for which that rate was established requires that rate to be paid by the shipper and collected by the carrier, and any departure from

it, either by the carrier or the shipper, is as much a crime as it would be if the rate had been fixed by specific enactment. Not even a court may interfere with a published rate or authorize a departure from it when it has been established voluntarily by the carrier."¹²

§ 245. Duty of Carriers to Quote Rates to Shippers.

See *Section 110, ante*.

§ 246. Contract to maintain Established Rate ineffective after Higher Rate established.

A contract between a carrier and a shipper to transport the latter's goods in interstate or foreign commerce at the then established rate for a definite time is ineffective after a higher rate has been filed and published as required by law. The time during which a rate different from the agreed rate is established by filing and publishing is excepted from the term of such a contract by virtue of the National Acts to Regulate Commerce, which are a part thereof.¹³

In *C. & O. Ry. Co. v. Standard Lumber Co.*,¹⁵ a lumber company, which was a shipper of railroad ties, made a contract with the railroad company in 1889 by which it agreed to build a tie hoist for loading ties at a station, and the railroad company agreed to haul its ties to a designated point for \$8.50 per car, and to return to the lumber company 10 percent of the freight so received to apply on the cost of the hoist until entirely paid for, when it was to become the property of the railroad company. In the meantime, however, it could be used only by the lumber company. The rate given was materially less than the published rate, which was charged other shippers. *Held*, That such contract was one designed to give the lumber company an undue

¹² See note 2, *supra*.

¹³ *Armour Packing Co. v. United States* (1907), 153 Fed. Rep. 1, 82 C. C. A. 135, affirmed 209 U. S. 56; 52 L. ed. 681, 28 Sup. Ct. 428.

¹⁵ *C. & O. Ry. Co. v. Standard Lumber Co.* (1909), 174 Fed. Rep. 107.

preference or advantage over other shippers, in violation of the Interstate Commerce Act and was illegal and not enforceable in any part.

§ 247. Special Understanding between Shippers and Carriers not published in their Tariffs, of no valid Effect.

A shipper had an understanding with agents of carriers that when he delivered shipments to them consigned to stations at which there were no agents the carrier would so advise him and hold the shipments for further direction. In a given case a carrier neglected to so advise him and to hold the shipment, but billed it and sent it forward to a non-agency station as a prepaid shipment: *Held*, That the shipper must pay the charges, and that no understanding of that nature, not incorporated in the published tariffs of the carrier, will operate to relieve the carrier from the duty of collecting the lawful charges.¹⁶

§ 248. Leasing Carrier's Property in Consideration of Lessee's Shipments.

A carrier leased a part of its property to a certain industry under a contract which contained the obligation on the part of the lessee industry to make all of its shipments via the line of the lessor carrier. Such a provision plainly implies that the traffic so furnished by the lessee and so secured by the lessor is an important and substantial consideration which might amount to a concession in the rates of transportation, and, therefore, be an unlawful device or discrimination. The Commission, therefore, expressed doubt as to the propriety of the practice.¹⁷ However, suit has been filed in the United States Courts by the carrier to annul such contract and a judicial determination of the question is awaited with interest.^{17a}

¹⁶ Rule 20, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

¹⁷ See Note 1, *supra*; see *Gund v. C. B. & Q. Rd. Co.* (1910), 18 I. C. C. R. 364.

^{17a} *C. C. C. & St. L. Rd. Co. v. I. C. Hirsh Iron, Steel & Rail Co.*, in Circuit Court, Sixth Circuit.

§ 249. **Contracts of Shipment.**

See "*Bills of Lading and Contracts of Shipment*," Chapter 9, *ante*.

§ 250. **Contracts entered into prior to the Passage of the Act for Free Transportation based upon moneyed or other valuable Consideration.**

¶ A. **RELEASE OF DAMAGES AS CONSIDERATION FOR ISSUANCE OF FREE PASSES.**

An interesting case involving construction of the free-pass prohibition of the Act arose in the United States Circuit Court for the Western District of Kentucky, in the case of *Mottley et al. v. Louisville & Nashville Railroad Co.*¹⁸ It seems that Mottley and his wife made a contract in October, 1871, with the Louisville & Nashville Railroad Company, by which the carrier, in consideration of a release of damages for injuries to complainants, contracted to issue free passes over its line to complainants during their natural lives. This agreement was accepted by the complainants and the railroad company, from its date until January 1, 1907, for each of the next succeeding thirty-five years, issued to the complainant the passes it thereby stipulated to issue. On January 1, 1907, the defendant refused to issue any further passes for interstate transportation to complainants, claiming that the free-pass amendment to the Act made such issuance illegal. Upon the complainants bringing suit to compel the defendant to specifically perform the stipulations of the contract the defendant demurred to the bill, setting up such amendment as defense. The Court overruled the demurrer and said:

"Notwithstanding the general purpose of the Act and notwithstanding the general language used therein, must we conclude that Congress intended to deal with the very unusual case of contracts like that with the complainant, whereby they had already contracted and paid for their own

¹⁸ *Mottley v. L. & N. R. Co.* (1907), 150 Fed. Rep. 406.

transportation as passengers over defendant's lines? Complainants, by paying for it, had acquired a vested right, certainly as between them and the defendant, to the thing the latter contracted to deliver. Under these circumstances, is it fair or more near right to assume that Congress meant to destroy this vested right without requiring the defendant to reimburse the complainants the money potentially paid for the service than it is to assume that Congress meant to do no such unjust and unnecessary thing even by the general language of the Act? The invalidation of the complainants' contract would have no appreciable effect upon the general operations of the Act, and would, therefore, be practically as unnecessary as it would be unjust. Such invalidation could be justified upon no principle which would aid in the general purposes of the legislation, but would be the wanton infliction of an unnecessary wrong. We are unwilling, therefore, to impute to Congress a deliberate intention of that character, and we believe the authorities justify this reluctance."

The above case, however, was appealed to the United States Supreme Court and that Court reversed the judgment and remitted the case to the Circuit Court with instructions to dismiss the suit for want of jurisdiction, there being no diversity of citizenship alleged. Both parties were citizens of Kentucky.¹⁹

The case is a novel one and is only given for the value of the principle involved.

¶ B. CONVEYANCE OF LAND TO CARRIER AS CONSIDERATION FOR ISSUANCE OF FREE PASSES.

In case of *Curry v. Kansas & Colorado Pacific Ry. Co.*,²⁰ the plaintiff conveyed in August, 1886, a certain piece of land in consideration of which the defendant railway company agreed to furnish the plaintiff with free passes for transportation over its lines. In an action for breach of the con-

¹⁹ *L. & N. Rd. Co. v. Mottley*, 211 U. S. 149, 53 L. ed. 126 (1903), 29 Sup. Ct. 42.

²⁰ *Curry v. K. & C. P. Ry.* (1897), 58 Kansas 6; 48 Pacific 579.

tract, the Court in upholding its validity, held that inasmuch as the passes were given for a valuable consideration, the contract did not come within the prohibitive terms of the Interstate Commerce Act, passed in 1887.

§ 251. Commission no Authority to compel Performance of Contracts.

The Commission has no power to either enforce the specific performance of contractual obligations or to award damages for the breach of such agreements between carriers and shippers.²¹ Such power has never been confided to that body.²²

§ 252. Statute does not take away Carrier's Common-Law Right to Contract.

The Interstate Commerce Act is not to be so construed as to abridge or take away the common-law right of the carrier to make contracts and adopt proper business methods, further than its terms and recognized purposes require.²³

§ 253. Status of Contracts for Special Rates entered into before Passage of the Act.

The Interstate Commerce Act, when it took effect, abrogated all existing contracts with common carriers for special interstate rates,²⁴ and all such contracts became illegal.²⁵

§ 254. State Statutes relating to Contracts between Carriers and Shippers.

A State statute making it unlawful for a railroad com-

²¹ General Electric Co. v. N. Y. C. & H. R. R. Co. et al. (1908), 14 I. C. C. R. 237.

²² Traders' & Travelers' Union v. P. & R. Ry. Co. et al. (1887), 1 I. C. C. R. 371; 1 I. C. C. R. 122; Commercial Club of Omaha v. C. & N. W. Ry. Co. et al. (1897), 7 I. C. C. R. 386.

²³ I. C. C. v. L. & N. Rd. Co. (1896), 73 Fed. Rep. 409.

²⁴ Fitzgerald v. Fitzgerald & M. Const. Co. (1894), 41 Nebraska 374; 59 N. W. 838.

²⁵ Bullard v. Northern Pacific Rd. Co. (1890), 10 Montana 168; 25 Pac. 120, 11 L. R. A. 246n.

pany in that State to charge and collect a greater sum for transporting freight than is specified in the bill of lading, is, when applied to freight transported into the State from a place without it, in conflict with the provisions of Section 6 of the Interstate Commerce Act stating that it shall be unlawful for such carrier to charge and collect a greater or less compensation for the transportation of property than is specified in the published schedule of rates provided for by the Act, and in force at the time; and, being thus in conflict, it is not applicable to interstate shipments.²⁶

When a State statute and a Federal statute operate upon the same subject matter, and prescribe different rules concerning it, and the Federal statute is one within the competency of Congress to enact, the State statute must give way.²⁷

²⁶ *Gulf, Colorado & Santa Fe Ry. Co. v. Hefley* (1895), 158 U. S. 98, 39 L. ed. 910, 15 Sup. Ct. 802, followed in *Spratlin v. St. L. S. W. Ry. Co.* (1905), 76 Arkansas 32; 88 S. W. 836; *St. L. S. W. Ry. Co. v. Carden* (1896), 34 S. W. 145; see also *A. K. & N. Ry. Co. v. Horne* (1900), 106 Tenn. 73; 59 S. W. 134.

²⁷ *Ibid.*

CHAPTER XVII.

TERMINAL FACILITIES, REGULATIONS AND CHARGES.

SECTION

255. Duty of Carrier to furnish Adequate Terminal Facilities.
256. Duty of Carrier to establish Reasonable Regulations and Practices governing Terminal Facilities.
257. Terminal Facilities may vary with Size or Importance of City.
258. Rules to insure Safety of Terminal.
259. Shippers should adjust Their Business to meet Necessary Regulations governing Receipt and Delivery of Freight.
260. Rules governing the loading and unloading of Freight for Shippers.
261. Carrier not required to give the Use of Its Tracks to Traffic of Competing Road.
262. Distribution of Consignments of Freight held in Storage by Carrier.
263. Carriers are not required to make Free Delivery to Points Located on Line of Another Carrier.
264. Collection by Carrier of Less-Than-Carload Shipments at Point of Origin.
265. Switches and Switch Connections.
266. Absorption of Switching Charges.
267. Transfer charges.
268. Storage charges.
269. Demurrage or "Car-Service."
270. Terminal Charges must be Just and Reasonable.
271. Publication of Regulations affecting Terminal Service and Charges Therefor.
272. Carrier not required to telegraph Consignor When Shipment Is Refused by Consignee or Latter Cannot be Found.
273. Discrimination in Terminal Facilities and Charges between Commodities.
274. Live Stock Facilities.
275. Jurisdiction of Interstate Commerce Commission over Terminal Facilities and Terminal Charges.
276. States no Authority over Terminal Services and Charges Affecting Interstate Transportation.

§ 255. Duty of Carrier to furnish Adequate Terminal Facilities.

The first section of the Act to Regulate Commerce after defining the term "transportation" to include "all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery * * * and handling of property transported," make it the duty of every carrier subject to the provisions of the Act "to provide and furnish such transportation upon reasonable request therefor and to establish just and reasonable rates thereto." This section plainly makes it obligatory upon carriers to establish proper terminal facilities for the receipt and delivery of property transported.

§ 256. Duty of Carrier to establish Reasonable Regulations and Practices governing Terminal Facilities.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) makes it the duty of all common carriers subject to its provisions to establish, observe and enforce just and reasonable regulations and practices affecting the receiving, handling, transporting, storing and delivery of property subject to the provisions of the Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of such property upon just and reasonable terms, and prohibits every unjust and unreasonable regulation and practice with reference to commerce between the states and with foreign countries.

§ 257. Terminal Facilities may vary with Size or Importance of City.

The Interstate Commerce Act was not intended to require that precisely the same accommodation should be made for passenger and freight traffic at every station on a line of railroad, irrespective of the size or importance. A large city may properly be given facilities, although they make its

traffic cheaper and more convenient than that of smaller places.¹

§ 258. Rules to insure Safety of Terminal.

There is no question but what a carrier has the right to make and enforce suitable regulations to insure the safety of its terminals and the freight passing through the same for shipment or delivery.²

§ 259. Shippers should adjust Their Business to meet Necessary Regulations governing Receipt and Delivery of Freight.

Shippers generally at competing cities must and do adjust the conduct of their business to the differing rules and regulations which carriers find necessary to apply at different points in the reception and delivery of freight, and unless the carrier in providing transportation or depot facilities, including the hour of closing, is clearly acting in disregard of the rights of shippers, the resulting inconvenience or embarrassment of shippers and even some additional expense in the delivery of freight to the carrier are not matters which warrant a finding that the prejudice is *undue*, or the advantage *unreasonable*.³

§ 260. Rules governing the loading and unloading of Freight for Shippers.

While it is true that the usual practice is for consignees to do their own unloading at destination, clearly there is nothing in the law or in public policy that forbids a carrier to unload freight for them if it does so for all shippers alike. Generally speaking a carrier may build up its traffic by offering its shippers any facilities of that nature. This is understood to have been so held by both the courts and

¹ *Michie v. N. Y. N. H. & H. R. R. Co.* (1907), 151 Fed. Rep. 694, citing *Detroit G. H. & M. Ry. Co. v. I. C. C.* (1906), 74 Fed. Rep. 803; 21 C. C. A. 103; 46 U. S. App. 308.

² *Preston & Davis v. D. L. & W. R. R. Co.* (1907), 12 I. C. C. R. 115.

³ *Cincinnati Chamber of Commerce, etc., v. B. & O. S. W. R. Co. et al.* (1904), 10 I. C. C. R. 378.

the Commission.⁴ Neither can it be stated as a matter of law that it is the absolute duty of carriers to unload carloads of package freight, nor that this duty rests upon the shipper, as there is no hard and fast rule of law upon the subject. It is rather a question with respect to each commodity of what, under the circumstances, is just and reasonable, and perhaps also what has been the practice.⁵

There is no good reason why ordinary package freight, which is loaded and unloaded upon the team track or at the private siding, should not be handled into and out of the car by the shipper in the same manner that bulk freight is.^{5a}

It is not unlawful for carriers to assess a reasonable charge for loading or unloading, or for assisting in loading or unloading, carload freight, provided the service to be rendered and the charge to be assessed are clearly stated in the tariff. The carrier must have the right to unload carload shipments and release its equipment when the consignee has neglected to unload within the free time provided in carrier's tariff, and the carrier may not, because of consignee's neglect be required to perform that service without reasonable compensation therefor. The rule and practice in this regard must, however, be nondiscriminatory.^{5b}

§ 261. Carrier not required to give the Use of Its Tracks to Traffic of Competing Road.

The third section of the Act to Regulate Commerce provides that nothing contained therein shall be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

⁴ In the Matter of Allowances to Elevators by the Union Pacific Rd. Co. (1907), 12 I. C. C. R. 86.

⁵ Wholesale Fruit & Produce Assn. v. A. T. & S. F. Ry. Co. et al. (1908), 14 I. C. C. R. 410.

^{5a} Wholesale Fruit & Produce Assn. v. A. T. & S. F. Ry. Co. et al. (1910), 17 I. C. C. R. 596; see *Utica Traffic Bureau v. N. Y. C. & H. R. R. Co.* (1910), 18 I. C. C. R. 271.

^{5b} *Schultz-Hansen Co. v. Southern Pacific Co. et al.* (1910), 18 I. C. C. R. 234.

§ 262. Distribution of Consignments of Freight held in Storage by Carrier.

The functions of a carrier are to receive, transport and deliver. As a rule, it can only be forced into the position of warehouseman through lack of diligence on the part of the consignee in the removal of his property. With no general duty to act as a warehouseman for indefinite periods in connection with its primary obligations as a common carrier, it cannot assume to provide shippers with valuable warehouse facilities which are not essential to its business as a carrier without furnishing them for all shippers at all times and upon the same terms and notifying the public thereof in the manner provided by law.

Distributing consignments in part lots to different subsequently designated persons and reshipping upon shipper's order parts of consignments held in store and kindred concessions come within the same requirements of impartiality and publication.⁶

The storage of freight and part lot distribution are of considerable importance and value to shippers, and especially so to the class of manufacturers or dealers largely engaged in supplying those staple commodities which are in common demand throughout the country. To the extent of its value, each privilege lessens the aggregate compensation paid by shippers to carriers for transportation and terminal services.⁷

The charges made for such services, and all rules and regulations which in any wise change, affect or determine such aggregate compensation, are plainly required by the statute to be shown by the carriers upon their published rate schedules. The privileges in question do change, affect or determine the aggregate charge for the shipper and to the extent of the cost for the carrier as well.⁸ They are also terminal facilities which are covered by the regular transportation charge or for which a special charge is imposed.

⁶ American Warehousemen's Ass'n v. Ill. Cent. Rd. Co. et al. (1898), 7 I. C. C. R. 556.

⁷ Ibid.

⁸ Ibid.

Any injustice resulting from allowance and non-allowance by the carriers of the privileges and facilities involved seems clearly forbidden by Section 2 of the statute, as interpreted by the United States Supreme Court in *Wight v. United States*,⁹ and the general provision against undue preference in the third section also applies.

Section 1 of the Act provides that "all charges for any services rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, for the receiving, delivering, storage or handling of such property shall be reasonable and just." From this it appears that storage is, within the contemplation of the Act, an incident of transportation and may be dealt with as such. By Section 6 it is provided that "the schedules printed as aforesaid shall also state separately the terminal charges and any rules or regulations which in any wise affect or determine any part of the aggregate of such aforesaid rates and fares and charges." From what has been already said it is apparent that the granting of storage as a part of the service covered by a particular rate may be a matter of great consequence to the shipper. The object of the sixth section is to secure to the public an opportunity of knowing the rates charged by carriers for the services rendered, but it is of no possible avail to state the amount of the rate unless the thing or things covered by that rate are also stated or known. Whenever any service is rendered or any privilege allowed beyond the ordinary receiving, transporting and delivery of the property, that should appear upon the schedule.¹⁰

§ 263. Carriers are not required to make Free Delivery to Points Located on Line of Another Carrier.

The Act to Regulate Commerce in specific terms provides that a common carrier shall not be required to give the use of its tracks or terminal facilities to another carrier engaged in like business.¹¹

⁹ *Wight v. United States*, 167 U. S. 512; 42 L. ed. 258, 17 Sup. Ct. 822.

¹⁰ See note 6, *supra*.

¹¹ Act to Regulate Commerce. Section 3.

In the absence of tariff provisions to the contrary, the transportation rate shown in a carrier's tariff on a certain commodity to a given point is understood to include delivery only to industries or unloading points located upon its own rails and if the consignee or owner of the shipment desires delivery to points located on the line of another carrier he must pay the lawful charge for such service.¹²

§ 264. Collection by Carrier of Less-Than-Carload Shipments at Point of Origin.

The Commission condemned as unlawful a practice under which a carrier provides an empty car at factory sidings, in which the shipper may load less-than-carload shipments, which the carrier then moves to its regular freight station where the shipments are assorted and placed in other cars to be forwarded to their respective destinations. Such practice is lawful only under definite and clear tariff authority, non-discriminatory in terms and in its application.¹³

§ 265. Switches and Switch Connections.

See *Chapter 24, post*.

§ 266. Absorption of Switching Charges.

¶ A. RULES MUST BE STATED IN PUBLISHED TARIFF.

No switching or other terminal charges should be absorbed except under a plain and specific tariff provision therefor.¹⁴

¶ B. WHERE TWO SMALLER CARS ARE FURNISHED INSTEAD OF CAR ORDERED BY SHIPPER.

Where a carrier absorbs switching charges on carload shipments and for its own convenience furnishes a shipper two smaller cars instead of one car of the size ordered, in accord-

¹² Laning-Harris Coal & Grain Co. v. A. T. & S. F. Ry. Co. (1907), 12 I. C. C. R. 479; see also Leonard v. C. M. & St. P. Ry. Co. (1907), 12 I. C. C. R. 492.

¹³ Rule 97, Con. Rul. Bul. No. 4 (October 12, 1908).

¹⁴ Leonard et al. v. C. M. & St. P. Ry. Co. (1907), 12 I. C. C. R. 492.

ance with its rules in that regard, making the same rate as though one car had been furnished, switching charges should be absorbed on both of the cars furnished.¹⁵

¶ C. NOT PROPER FOR CONSIGNEE TO PAY SWITCHING CHARGE AND CARRIER TO DEDUCT SUCH CHARGE FROM THE RATE.

The tariff of a carrier provided for the absorption of switching charges. Upon inquiry it was agreed that the Commission could not sanction a practice under which switching charges are paid by the consignee the carrier deducting the amount of the switching charge from the published rates and collecting the balance from the consignee. In all cases the carrier must collect the full tariff rates. Where its tariffs provide for absorption of switching charges the carrier must pay the switching company for the services and not leave that to be done by the shipper.¹⁶

¶ D. DISCONTINUANCE AND SUBSEQUENT RESUMPTION OF PRACTICE OF ABSORBING SWITCHING CHARGE AS EVIDENCE OF UNREASONABLENESS OF SUCH CHARGE.

In the case of *Leonard v. C., M. & St. P. Ry. Co.*,¹⁷ the defendant at one time absorbed the switching charge on coal at Kansas City, later discontinued the practice, and subsequently resumed it. Complainants alleged that inasmuch as defendant indulged in the practice and after discontinuance resumed it that it had committed itself to the unreasonableness of requiring shipper to at any time pay said switching charge, and therefore reparation was asked for switching charges paid during the period when defendant required that such charges should be paid by shipper. The Commission in dismissing the complaint, *Held*, That to support the contention of the complainant would be to say that transportation charges must in every instance remain at a fixed figure or be reduced by the carrier at the peril of being called upon

¹⁵ *Milwaukee Falls Chair Co. v. C. M. & St. P. Ry. Co.* (1909), 16 I. C. C. R. 217.

¹⁶ Rule 64, Con. Rul. Bul. No. 4 (April 14, 1908).

¹⁷ See note 14, *supra*.

to respond in damages for all charges that had before that time been collected under the rate so reduced.

§ 267. Transfer Charges.

The Act to Regulate Commerce does not bar a carrier from providing for costs of transfer in making delivery to a second carrier but if it so provides it must publish and file a tariff showing where the transfer will be made, the kind of transfer service required, and the rates and charges to be exacted therefor. When it has done that, it can lawfully, and it must, exact from the shipper the rates and charges so fixed. Such charges and the means employed must, however, be reasonable under the circumstances and conditions that surround the transfer. Any other rule would permit carriers to dictate junction point transfers at will, both as to kind of service and amount of charges therefor, and thus would open the way to unknown rates and charges and create opportunities to indulge in unjust discriminations and undue preferences. The shipper is entitled to notice of a transfer charge other than one coming to him through the collection of the charge from his consignee, and as he is not obliged to follow his shipment and make the transfer himself, he is entitled to the protection afforded by a published definite rate.¹⁸ A carrier cannot excuse the collection of an unpublished and unknown drayage and transfer charge by proof that it had a rule which forbade the sending of its own cars beyond its own line during a period of car shortage and congestion of business.¹⁹ This defense would be especially unavailable where no notice of the rule, either actually or by reference in a published tariff, had been brought to the shipper.²⁰

§ 268. Storage Charges.

¶ A. STORAGE DEFINED.

Storage is a charge assessed by the carrier against the ship-

¹⁸ Schwager & Nettleton v. Gr. Nor Ry. Co. (1907), 12 I. C. C. R. 521.

¹⁹ Ibid.

²⁰ Ibid.

per for the detention of freight in the carrier's depot or station beyond the free time allowed the shipper for loading or unloading. It is a demurrage charge applied to less than carload traffic.

¶ B. PURPOSE OF ASSESSING STORAGE CHARGES.

A railroad freight depot and a public storage warehouse are buildings whose businesses are wholly dissimilar. The former is planned and built to accommodate the current business of the railroad when expeditiously handled, and affords no facilities for storage during long periods of time.²¹ The storage warehouse is especially designed for storage purposes. The railway company imposes storage charges, not for gain especially, but in order that it may be enabled to clear its depots, to the end that current business may not be blockaded. That this object may be effected it is justified and necessary to impose a rate higher than that fixed by the public storage warehouse, and if this were not done, there would be no inducement for the removal of goods from the depot to the public warehouse. The business public is as much interested as the railroad in having goods removed from cars and depots within a reasonable time after they reach their destination. Another fact which renders storage in a railway depot expensive and hazardous is that owing to the daily movement of traffic into and out of the depot, goods in storage are subject to the risk of damage which often results in loss to the railroad as well as to the owner of the goods.²²

§ 269. Demurrage or "Car-Service."

See *Chapter 18* for full consideration.

§ 270. Terminal Charges must be Just and Reasonable.

By Section 1 of the Act to Regulate Commerce, all charges for services in connection with the receipt, delivery, storage and handling of property transported are required to be just and reasonable.²³

²¹ Blackman, Jr., v. Southern Railway Co. (1904), 10 I. C. C. R. 352.

²² Ibid.

²³ Pennsylvania Millers' State Assn. v. P. & R. Ry. Co. et al., 8 I. C. C. R. 531.

A terminal charge for delivering carloads of live stock to the Union Stock Yards in Chicago, a point beyond the carrier's line, if in itself just and reasonable, and separately stated in the tariff schedules, as required by the amended Act to Regulate Commerce, cannot be condemned or the carrier ordered to reduce it, on the ground that it, taken together with prior charges of transportation over the lines of the carrier, or of connecting carriers, makes the *total* charge to the shipper unreasonable.²⁴

§ 271. Publication of Regulations affecting Terminal Service and Charges Therefor.

See *Section 461, post.*

§ 272. Carrier not required to telegraph Consignor When Shipment Is Refused by Consignee or Latter Cannot be Found.

The Commission has declined to impose on carriers the duty of telegraphing to the consignor in the event that a shipment is refused by the consignee or when the consignee cannot be found. The Commission stated that it was unable to see why the carrier that has completed the contract of carriage, and has delivered a shipment to the consignee thereof, who has surrendered the bill of lading and accepted the shipment, should again accept custody of and liability for the shipment, just because the consignee alleges that the commodity is not of the grade or quality agreed upon between himself and the consignor.²⁵

Surely if the owner of the property suffers damage by reason of any unreasonable delay on the part of the carrier in advising him that the freight is undelivered, such owner has a remedy at law.²⁶

§ 273. Discrimination in Terminal Facilities and Charges between Commodities.

See *Section 366, post.*

²⁴ I. C. C. v. Stickney et al. (1909), 215 U. S. 66, 54 L. ed. —, 30 Sup. Ct. 66, affirming 164 Fed. Rep. 638.

²⁵ Kehoe & Co. v. N. C. & St. L. Ry. Co. (1908), 14 I. C. C. R. 555.

²⁶ Ibid.

§ 274. Live Stock Facilities.

¶ A. DUTY OF CARRIER TO FURNISH PROPER FACILITIES FOR HANDLING LIVE STOCK.

A railroad company, as a carrier of live stock, is obliged to provide necessary means and facilities for receiving live stock offered to it for shipment and for its delivery to the consignee. The duty of a carrier of live stock to receive, transport and deliver it will not be fully discharged unless the carrier makes provision at the place of loading to properly receive and load the stock, and provision at the place of unloading to properly deliver the stock to the consignee.²⁷

A carrier of live stock cannot make a special charge for merely receiving or delivering it in and through stock yards provided by itself, and it cannot invest another corporation with authority to impose burdens of that kind upon shippers and consignees.²⁸

When a railroad company does not provide suitable facilities for the delivery of live stock contracted to be carried by it, it may be compelled to deliver it through facilities furnished by the consignee.²⁹

¶ B. LOCATION OF LIVE-STOCK DEPOT.

A railroad company may maintain its live-stock depot at a particular point, although it neither builds nor repairs nor insures the stock pens into which the stock is unloaded, and does not hire or control the men who do the unloading; and whether the Union Stock Yards at Chicago have been, in railroad phraseology or in legal definition, the depot of the railroad is immaterial, for they were, and still are, in fact the point to which the stock is transported and unloaded under the shipping contract of the carrier.³⁰

²⁷ Keith et al. v. Kentucky Central Rd. Co. et al. (1887), 1 I. C. C. R. 189; 1 I. C. R. 601; Covington Stockyards Co. v. Keith (1891), 139 U. S. 128; 11 Sup. Ct. Rep. 461, 35 L. ed. 73.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Cattle Raisers' Assn. of Texas et al. v. C. B. & Q. Rd. Co. et al. (1905), 11 I. C. C. R. 277.

¶ C. LEGALITY OF CHARGE FOR SWITCHING LIVE STOCK TO AND FROM LINES OF CARRIER AND THE UNION STOCK YARDS IN CHICAGO.

Interstate Commerce Commission v. Receivers of the Chicago Great Western Railway Co. et al.,³¹ commonly known as the Terminal Charge case, involved the right of carriers to impose a charge of \$2 per car for delivery of live stock at the Union Stock Yards, Chicago.

The Union Stock Yards is the only point in Chicago at which live stock is or can be delivered in considerable quantities, and this has been true for many years past. Up to June 1, 1894, all railways entering Chicago had made delivery at the Union Stock Yards for the through rate, but on that date all made effective a terminal charge of \$2 per car. The excuse for making this charge was that the Chicago Junction Railway, which owns the tracks upon which the stock yards are situated, had for the first time imposed a trackage charge which averaged about \$1 per car.

Complaint was made to the Commission attacking this \$2 charge. It is not alleged that the charge itself was unreasonable, but rather that it was unreasonable to impose any charge, since the rate carried with it a delivery. The Commission held that since the expense of making delivery to the carrier had been increased \$1 per car the railroads might properly make a terminal charge of that amount, but that any further addition was unjust. At that time it had no power to make an order fixing any definite rate, but it recommended that the carriers impose a terminal charge not exceeding \$1.

Proceedings were brought to enforce this recommendation, which finally reached the Supreme Court.³² That Court held that this delivery to the Union Stock Yards had been included

³¹ See note 24, *supra*.

³² *I. C. C. v. C. B. & Q. R. Co. et al.* (1900), 103 Fed. Rep. 249, 43 C. C. A. 209, affirming 98 Fed. Rep. 173, dismissing petition of Interstate Commerce Commission in *Cattle Dealers' Assn. v. Ft. W. & D. C. Ry. Co.* (1898), 7 I. C. C. R. 513. Decision affirmed by Supreme Court, *I. C. C. v. C. B. & Q. R. Co. et al.* (1902), 186 U. S. 320, 46 L. ed. 1182, 22 Sup. Ct. Rep. 824.

in the rate previous to June 1, 1894, and approved the finding of the Commission that carriers should have added but \$1 to their rates. For other reasons the Court declined to enforce the recommendation of the Commission and dismissed the bill without prejudice to the right of the Commission to proceed further in the correction of the apparent wrong.

These proceedings before the Court and Commission had occupied many years and were just concluded when the Hepburn amendment took effect. The complainants in the original case at once applied to the Commission to make an order under that Act, requiring the carriers to charge not exceeding \$1 per car for this terminal service, and such an order was made. The carriers brought suit to restrain its enforcement, the Circuit Court granted an injunction, and the Supreme Court now affirms that decree.

The Court holds that inasmuch as \$2 was a reasonable charge for the service rendered in making delivery at the stock yards, the Commission had no authority to reduce that charge to \$1. The Commission had expressly found that \$2 was a reasonable charge, looking to the cost of the service, and had stated that it ordered the rate reduced because, under the circumstances, it was unreasonable to impose any terminal charge except so far as that charge was justified by the added cost of service to the carriers. This position of the Commission was referred to and approved by the Supreme Court in the first case, but is not alluded to in the opinion in the present case.

These defendants transport live stock both to Chicago and to other live-stock markets, like Kansas City and St. Louis. No corresponding charge is imposed at these markets, and the Commission found that to make this charge at Chicago was an unjust discrimination against Chicago. This finding is not alluded to in the opinion.

This case apparently holds that if railroads impose a terminal charge the only power of the Commission is to inquire whether that charge is reasonable; it has no authority to inquire whether to impose the charge at all is unjust and unreasonable.

§ 275. Jurisdiction of Interstate Commerce Commission over Terminal Facilities and Terminal Charges.

¶ A. POWER OF COMMISSION TO COMPEL ESTABLISHMENT AND MAINTENANCE OF STATION FACILITIES.

The obligation to provide station facilities at a given point along the line of a railroad may arise under the terms of the charter of a company or may be imposed by statute, and some authorities assert that the duty exists also at common law; but the Commission is not the proper forum to which to appeal for the enforcement either of a charter, statutory or common-law obligation, as it has no authority to issue the writ of mandamus, and possesses no common-law jurisdiction.³³

While the Commission may draw upon the wisdom of the common law for guidance in the consideration of many questions, yet its jurisdiction as an administrative and quasi-judicial body rests wholly upon the Act to Regulate Commerce.³⁴

The contention that the Commission has power, under the Act to Regulate Commerce, as amended June 29, 1906, to require a common carrier to locate or relocate and maintain a station at a given point is open to doubt; the Commission has stated that, without deciding this question, it is manifest that it shall not exercise such power unless all the facts and conditions clearly indicate that the interests of the general public in the locality involved are materially impaired by the lack of such facilities.³⁵

¶ B. JURISDICTION OF COMMISSION OVER TIME OF CLOSING FREIGHT DEPOTS.

The Commission is authorized by the Act to Regulate Commerce, after investigation, to order carriers to cease and desist from subjecting any particular person, locality or description

³³ Jones et al. v. St. L. & S. F. Rd. Co. (1907), 12 I. C. C. R. 144; see also Eddleman v. Midland Valley Rd. Co. (1908), 13 I. C. C. R. 103; Snook v. C. R. Co. of N. J. (1910), 17 I. C. C. R. 375.

³⁴ Ibid.

³⁵ Ibid.

of traffic to undue or unreasonable prejudice or disadvantage in any respect whatsoever, and its jurisdiction extends to a case of alleged unlawful prejudice and disadvantage to shippers of outbound package freight through enforcement by carriers of a regulation providing for the earlier closing of depots used for the reception of such freight.³⁶

¶ C. COMMISSION NO JURISDICTION OVER DELAY IN RECEIPT, FORWARDING OR DELIVERY OF TRAFFIC.

The Commission has no jurisdiction over cases which merely involve delay or negligence in the receipt, forwarding or delivery of property offered for transportation.³⁷

¶ D. COMMISSION NO AUTHORITY TO PRESCRIBE CERTAIN TIME TO BE ALLOWED CONSIGNEE TO DESIGNATE POINT OF DELIVERY.

Transportation by rail undoubtedly involves a suitable delivery. However, when a carload of hay destined to East St. Louis, Ills., is delivered by the carrier at a warehouse designated by the shipper or consignee prior to arrival in that city, or to the proper switching road, or is placed upon the team track of the carrier, if no specific delivery is named, the car has been properly delivered and the carrier may insist that the consignee shall accept such delivery; and in case the consignee intercepts and sells the carload while upon a hold track, after arrival at East St. Louis, but before such delivery he thereby accepts such delivery. Although authority over the transportation must carry with it authority over the delivery, yet if the consignee instead of removing the hay from the car so delivered, sells it to a customer, and the carrier, upon an order of the original consignee or of the purchaser, moves the car to the purchaser's warehouse in East St. Louis, that is a new and independent service or reconsignment performed entirely within the State of Illinois, of which the Interstate Commerce Commission has no jurisdiction.³⁸ It is probable

³⁶ See note 3, *supra*.

³⁷ *Richmond Elevator Co. v. P. M. Rd. Co.* (1905), 10 I. C. C. R. 629.

³⁸ *St. Louis Hay & Grain Co. v. C. B. & Q. Ry. Co. et al.* (1905), 11 I. C. C. R. 82.

that the Congress of the United States might, either directly or indirectly through a commission require that such shippers be allowed a certain time after arrival in East St. Louis to designate the point of delivery for interstate shipments, and that such delivery be made accordingly.³⁹

¶ E. JURISDICTION OF COMMISSION OVER RULES GOVERNING
LOADING AND UNLOADING OF FREIGHT.

Rules and regulations prescribing who shall load and unload cars of freight are rules or regulations affecting rates, and are therefore subject to the control of the Commission under the fifteenth section of the Act to Regulate Commerce.⁴⁰

¶ F. EXCLUSIVE JURISDICTION OF COMMISSION OVER TERMINAL
FACILITIES AND CHARGES RELATING TO INTERSTATE
TRANSPORTATION.

A shipment is not completed until arrival at destination and delivery to the consignee; and the authority vested in Congress by the commerce clause of the Constitution covers everything related to the delivery of freight transported between the States.⁴¹

It is well settled that in the absence of Congressional action the States may legislate with respect to matters which are strictly local in character, even though by so doing they may, to some extent, regulate interstate commerce; but, as said by the Supreme Court in the *Port Wardens case*⁴² "whatever sub-

³⁹ St. Louis Hay &c. Co. v. C. B. & Q. R. Co., 11 I. C. C. R. 82.

⁴⁰ Wholesale Fruit & Produce Assn. v. A. T. & S. F. Ry. Co. et al. (1908), 14 I. C. C. R. 410, citing Preston & Davis v. D. L. & W. R. R. Co. (1907), 12 I. C. C. R. 114, a preliminary injunction to restrain the enforcement of the order of the Commission pending a hearing on the merits being refused in D. L. & W. R. R. Co. v. I. C. C. (1907), 155 Fed. Rep. 512.

⁴¹ Rhodes v. Iowa, 170 U. S. 412, 426, 42 L. ed. 1088, 18 Sup. Ct. 664; Bowman v. C. & N. W. Ry., 125 U. S. 465, 31 L. ed. 700, 8 Sup. Ct. 689, 1062; McNeill v. Southern Ry. Co., 202 U. S. 543, 559, 50 L. Ed. 1142, 26 Sup. Ct. 722.

⁴² Port Wardens Case (Cooley v. Board of Port Wardens) (1851), 12 How. (U. S.) 199, 13 L. ed. 996.

jects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

The question of terminal charges imposed in connection with interstate transportation would seem to be within the scope of this principle. The subject is national in character, and uniformity of regulation is essential. If the individual States were permitted to legislate in this field, endless confusion and discrimination would be the result. Such legislation would operate as a direct burden upon interstate commerce, and the Supreme Court has repeatedly refused to sustain State laws which had this effect.⁴³

But it is unnecessary to decide that the Federal authority over this subject is exclusive, inasmuch as Congress has taken definite action and removed the subject altogether from the field of State regulation. The first section of the Act to Regulate Commerce, after outlining the scope of the Commission's jurisdiction, defines *transportation* as including "all services in connection with the receipt, delivery, elevation, transfer in transit, * * * storage, and handling of property transported." Section 6 of the Act provides that the carrier's schedules "shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require." Beyond all possibility of doubt, therefore, the duty of regulating terminal charges when related to interstate transportation has been lodged with the Interstate Commerce Commission, and Federal Courts have so held.⁴⁴

The power of Congress to act with reference to this subject

⁴³ *Wabash, St. Louis & Pacific Ry. Co. v. Illinois*, 118 U. S. 557, 30 L. ed. 244, 7 Sup. Ct. 4; *Rhodes v. Iowa*, 170 U. S. 412, 42 L. ed. 1088, 18 Sup. Ct. 664; *Bowman v. C. & N. W. Ry. Co.*, 125 U. S. 465, 31 L. ed. 700, 8 Sup. Ct. 689, 1062; *McNeill v. Southern Ry. Co.*, 202 U. S. 543, 50 L. ed. 1142, 26 Sup. Ct. 722; *Central of Georgia Ry. Co. v. Murphy*, 196 U. S. 194, 204, 49 L. ed. 444, 25 Sup. Ct. 208.

⁴⁴ *United States v. Standard Oil Co.*, 148 Fed. Rep. 719, 722; *Michie v. N. Y. N. H. & H. R. R. Co.*, 151 Fed. Rep. 694, 695.

is indisputable; that Congress has made provisions for the regulation of these charges is just as clear; and it necessarily follows that a State law which conflicts with the Federal statute must give way.⁴⁵ The authority expressly conferred upon the Interstate Commerce Commission would be nugatory if the concurrent authority of the State were recognized.⁴⁶

§ 276. States no Authority over Terminal Services and Charges Affecting Interstate Transportation.

Property shipped from a point in one State to a point in another State retains the character of interstate commerce until it is actually delivered to the consignee, and an order of a State authority commanding the carrier to place cars containing such property on the private siding of the consignee for unloading, is void as an interference with the authority vested in the Interstate Commerce Commission by the Act to Regulate Commerce.⁴⁷

All services incidental or necessary to the transportation and final delivery of an interstate shipment are a part of the interstate transportation, and any charges relating thereto are subject to the provisions of the Act.⁴⁸

The right of Congress to control interstate commerce is not solely limited while the commerce is in actual transportation, but extends to and includes the necessary handling and delivery of that commerce at terminal points. A State statute, therefore, which imposes penalties for unjust discrimination in regard to the furnishing of terminal facilities, can have no

⁴⁵ *I. C. C. v. Detroit, G. H. & M. Ry. Co.* (1897), 167 U. S. 633, 642, 42 L. ed. 306, 17 Sup. Ct. 986; *Gulf, Colorado, etc., Ry. v. Hefley* (1895), 158 U. S. 98, 39 L. ed. 910, 15 Sup. Ct. 802.

⁴⁶ *Wilson Produce Co. v. Pennsylvania R. R. Co.* (1908), 14 I. C. C. R. 170, citing *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350; *I. C. C. v. C. & A. R. R. Co.*, 215 U. S. 479; *I. C. C. v. I. C. R. R. Co.*, 215 U. S. 452; *B. & O. R. R. Co. v. United States*, 215 U. S. 481.

⁴⁷ *Southern Ry. Co. v. Greenboro Ice & Coal Co. et al.* (1904), 134 Fed. Rep. 82; affirmed in *McNeill v. Southern R. Co.* (1906), 202 U. S. 543; 26 Sup. Ct. Rep. 722; 50 L. ed. 1142.

⁴⁸ *State v. A. T. & S. F. Ry. Co.* (1903), 176 Mo. 687; 75 S. W. 776; 63 L. R. A. 761.

application to interstate shipments since that subject is fully covered by the Interstate Commerce Act.⁴⁹

The interstate transportation of cars from another State which have not been delivered to the consignee, but remain on the track of the railway company in the condition in which they were originally brought into the State, is not completed and they are still within the protection of the commerce clause of the Constitution.⁵⁰

While a State in the exercise of its police power may confer power on an administrative agency to make reasonable regulations as to the place, time and manner of delivery of merchandise moving in channels of interstate commerce, any regulation which directly burdens interstate commerce is a regulation thereof and repugnant to the Federal Constitution, and so held that an order of the North Carolina Corporation Commission requiring a railway company to deliver cars from another State to the consignee on a private siding beyond its own right of way was a burden on interstate commerce and void.⁵¹

So it has been held that a State is without authority to compel a railroad company to transfer cars of live stock to a connecting road at a point of connection within the State, where the shipment was received in another State, and is, therefore, a subject of interstate commerce.⁵²

⁴⁹ *Felder v. M. K. & T. Ry. Co.* (1897), 42 S. W. 362 (Tex. Civ. App.)

⁵⁰ *McNeill v. Southern Ry. Co.* (1906), 202 U. S. 543; 26 Sup. Ct. Rep. 722; 50 L. ed. 1142, affirming 134 Fed. Rep. 82.

⁵¹ *Ibid.*

⁵² *Central Stock Yards Co. v. L. & N. Rd. Co.* (1902), 118 Fed. Rep. 113, 55 C. C. A. 63, affirming 112 Fed. Rep. 823, decree affirmed by Supreme Court in 192 U. S. 568; 24 Sup. Ct. Rep. 339; 48 L. ed. 565.

CHAPTER XVIII.

DEMURRAGE OR "CAR SERVICE."

SECTION

- 277. Demurrage defined.
- 278. Car-Service Charge Considered as a Penalty versus Rental or Storage Charge.
- 279. Right of Carriers to assess Demurrage Charge.
- 280. Different Plans of Car Service considered.
- 281. Factors to be considered in fixing Car-Service Rules.
- 282. Jurisdiction of Interstate Commerce Commission Exclusive over Demurrage and other Terminal Charges affecting Interstate Shipments—State Regulations not Applicable.
- 283. Demurrage Charges and Regulations affecting Interstate Shipments Must be Shown in Published Schedules of Carriers.
- 284. Demurrage Charges must be Just and Reasonable.
- 285. Difference in Free-Time Allowance based on the Nature and Character of the Commodity.
- 286. Duty of Shipper or Consignee to pay Demurrage Charges.
- 287. Duty of Carriers to collect Demurrage Charges.
- 288. Case in Which Consignee is relieved from Payment of Demurrage Charges.
- 289. Assessment of Demurrage on Privately-Owned Cars.
- 290. Demurrage Charges accruing pending Controversy between Shipper and Carrier.
- 291. Demurrage Charges accruing pending Controversy between Connecting Carriers.
- 292. Demurrage Charges on "Astray" Shipments.
- 293. Demurrage Charges resulting from Strikes.
- 294. Demurrage on F. O. B. Shipments.
- 295. Car-Service Charges on Traffic from and to Canada.
- 296. Reciprocal Demurrage Considered.
- 297. Waiver of Demurrage Charges by Carriers.
- 298. Uniform Demurrage Rules.

§ 277. Demurrage defined.

The term "demurrage" probably had its origin in Admiralty, where it is understood to mean the delay of a vessel in port by the freighter or charterer beyond the lay days allowed

for loading, unloading, or sailing; it also means the amount due by the freighter or charterer to the owner of the vessel for such detention.¹

The delay to the vessel and the payment to be made for it are both called demurrage.² Mr. Justice Story of the United States Supreme Court has said that "demurrage" is merely an allowance or compensation to the owner for the delay or detention of a vessel.³

Applying the above definitions to the term "demurrage" as used in railroad transportation, simply means the charge assessed by the carrier against the shipper or consignee for the detention of the vehicles of carriage beyond the time allowed for loading, or unloading; although among railroad and traffic men this charge for the detention of the cars is generally denominated "car-service charge," yet the two terms seem to be used synonymously.

§ 278. Car-Service Charge Considered as a Penalty versus a Rental or Storage Charge.

In considering the nature of a car-service charge, it may be well to inquire if such a charge be storage, rental or a penalty. There are no authorities to support a contention that car-service charge is storage. If it be contended that the car-service charge is car rental, then it must follow that the charge imposed by the rules generally is unreasonable, because a charge of \$1 per day is \$365.00 per year or over 36 percent of the car value, estimating freight cars to be worth \$1,000. No one would attempt to justify a 36 percent rental. The charge of 50 cents per day that one railroad pays another for the use of its car is rental, and there could be no argument advanced that would conveniently justify the fairness of charging one party 100 percent more than another party for the same service, which it would amount to if car-service charge were car rental; especially when the party paying 50 cents per day is subjecting the car to the wear and tear of usage.

¹ Bouvier's Law Dictionary.

² Abbott's Shipping.

³ The Apollon, 9 Wheat. (U. S.) 362, 6 L. ed. 111 (1824).

while the party paying \$1 is not subjecting the car to usage. Let us consider the car-service charge in the nature of a penalty. The railroads declare emphatically that revenue from this source is not the object; that they prefer the cars released; that they are not maintaining car-service bureaus as rental agencies, but as instruments whose function is to reduce car detention to a minimum. The collection of car-service charge is not in itself an end, but only a means to an end; therefore a much larger charge for car detention is imposed than would be justified as rental for storage in order to make it unprofitable for shippers or consignees to detain cars.⁴

The demurrage charge of \$1 per car which is usually assessed by carriers, is imposed not on the basis of a fair *quantum meruit*, but as a penalty to secure the prompt release of the car.⁵

§ 279. Right of Carriers to assess Demurrage Charge.

A railroad company is a common carrier. Its duty is to transport freight to destination and to deliver it to the consignee. It is the duty of the consignee to receive his freight within a reasonable time and if he neglects to do so the liability of the railroad company as a common carrier ceases and it becomes simply a warehouseman. It is under no legal liability to continue to discharge the duties of a warehouseman but may insist that the consignee shall receive and remove his freight. The consequences to the railway of neglect to do this are not merely in case of carload freight the loss of the use of the car. The uncertainty arising from the fact that cars are sometimes unloaded promptly and sometimes not, is embarrassing. The congestion of its terminals is often and perhaps usually a more serious matter than the loss of its cars.⁶

The law does not require a common carrier to give its cars and tracks under any terms for use as warehouses or places of business. After allowing a reasonable time for loading or unloading cars, the carrier may impose such charges for

⁴ Annual Report Railroad Commission of Ohio (1907).

⁵ St. Louis Hay & Grain Co. v. M. & O. R. Co. et al., 11 I. C. C. R. 90.

⁶ Kehoe v. C. & W. Ry. Co. et al. (1905), 11 I. C. C. R. 166.

further detention as will lead to the speedy release of its equipment. A carrier has a right to impose such charges at its terminals as will render that terminal available for the purpose for which it was intended.⁷ It would be not only much more expensive but often impossible for the railways of this country to handle their traffic at many points unless they required the prompt removal of the freight from the car. To permit one person to use the cars of a railroad company for a storehouse and to deny that privilege to another creates a discrimination between shippers which is often serious. For these reasons and others it is not only proper but highly essential that railroad companies should make and enforce uniformly such reasonable demurrage requirements as will insure the prompt receipt by the consignee of his freight. The demurrage charge which is imposed for that purpose is not, however, based upon the fair rental value of a car; it is in the nature of a penalty. While it should not be sufficient in amount to work an undue hardship upon the shipper who must occasionally pay it, it should be sufficient in amount to accomplish the purpose for which it is intended. \$1 per day is the demurrage charge universally named by car-service associations in all parts of this country in case of car load freight, and the same amount is generally if not uniformly fixed by railroad commissions invested with power to make rates and regulations.⁸

Demurrage charges and charges of a kindred nature are imposed as compensation to a carrier for an additional service. The rate of freight includes a delivery of the property; it does not include the storage of the property after a reasonable opportunity has been afforded the consignee to receive it. When, therefore, the carrier through the failure of the consignee to promptly remove the property is obliged to store the same either in its cars or its warehouses, it preforms a service not embraced in the rate and for which additional compensation may properly be exacted.⁹

⁷ *Wilson Produce Co. v. P. R. R. Co.*, 16 I. C. C. R. 116.

⁸ See note 6, *supra*.

⁹ *New York Hay Exchange Association v. P. R. R. Co.*, 14 I. C. C. R. 178.

§ 280. Different Plans of Car Service considered.

There are, generally speaking, three plans of car service in practice: Straight, Average and Reciprocal.

Straight car service makes a definite allowance for free time and provides a definite sum per day to be charged against shipper or receiver, for detention of cars beyond the specified free time, for loading or unloading. The car-service rules enforced-generally are of this class.

Average car service credits the shipper and receiver with good time; that is, if he loads or unloads certain cars within the free time, he is credited to offset penalties that may accrue because of detention beyond the free time in loading or unloading certain other cars.¹⁰

For explanation as to reciprocal car service see *Section 296, post*.

§ 281. Factors to be considered in fixing Car Service Rules.

Car-service rules should take cognizance of "bunching" enroute. The term "bunching" as applied to carload freight in transit means that carload shipments forwarded from originating point on different dates are delivered at destination on the same date. Car-service rules should make allowance for weather conditions. There are some kinds of freight that cannot be loaded or unloaded in wet or severe weather without damage; a snow-storm, a heavy rain-fall, or a very low temperature may interfere with or entirely prevent out-of-door work. The size of the car should be regarded as a factor in determining the free time allowance.¹¹

§ 282. Jurisdiction of Interstate Commerce Commission Exclusive over Demurrage and other Terminal Charges affecting Interstate Shipments.—State Regulations not Applicable.

In *Wilson Produce Co. v. Pa. R. R. Co.*,¹² the Commission

¹⁰ See note 4, *supra*.

¹¹ See note 4, *supra*.

¹² *Wilson Produce Co. et al. v. Pennsylvania Rd. Co.* (1908), 14 I. C. C. R. 170; case reheard (1909), 16 I. C. C. R. 116.

stated that demurrage charges when associated with an interstate movement appertain directly to interstate commerce. They represent the carrier's compensation for services rendered in connection with the transportation. A shipment is not completed until its arrival at destination and delivery to the consignee; and the authority vested in Congress by the commerce clause of the Constitution covers everything related to the delivery of freight transported between the States.¹³

In the case of *Interstate Commerce Commission v. D., G. H. & M. Ry. Co.*,¹⁴ the Supreme Court suggested that the Commission would be acting within its power if it should order that railway companies should regard cartage, when furnished free, as a terminal charge and include it in their schedule. If cartage charges may be regarded as a proper subject of national regulation, Federal authority over demurrage and terminal charges in connection with interstate commerce cannot be challenged. The Commission further held that the Federal authority in this field is exclusive.

It is well settled that in the absence of Congressional action the State may legislate with respect to matters which are strictly local in character, even though by so doing they may, to some extent, regulate interstate commerce; but, as said by the Supreme Court of the United States in the Port Wardens case¹⁵ "whatever subjects of this power are in their nature national, or admit only of one uniform system or plan of regulation, may justly be said to be of such a nature as to require exclusive legislation by Congress."

The question of terminal charges imposed in connection with interstate transportation would seem to be within the scope of this principle. The subject is national in character and

¹³ *Rhodes v. Iowa*, 170 U. S. 412, 42 L. ed. 1088, 18 Sup. Ct. 664; *Bowman v. C. & N. W. Ry. Co.*, 125 U. S. 465, 31 L. ed. 700, 8 Sup. Ct. 689, 1062; *McNeill v. Southern Ry. Co.*, 202 U. S. 543. 26 Sup. Ct. Rep. 722; 50 L. ed. 1142, affirming 144 Fed. Rep. 82.

¹⁴ *I. C. C. v. D. G. H. & M. Ry. Co.*, 167 U. S. 633; 17 Sup. Ct. Rep. 986; 42 L. ed. 306, affirming 74 Fed. Rep. 803; 43 U. S. App. 308. Same case, 57 Fed. Rep. 1005; 3 I. C. C. R. 613; 3 I. C. R. 60.

¹⁵ *Port Wardens Case (Cooley v. Board of Wardens)*, 12 How. (U. S.) 299, 13 L. ed. 996.

uniformity of regulation is essential. If the individual States were permitted to legislate in this field, endless confusion and discrimination would be the result. Such legislation would operate as a direct burden upon interstate commerce and the Supreme Court of the United States has repeatedly refused to sustain State laws which had this effect.¹⁶

But it is unnecessary to decide that the Federal authority over this subject is exclusive, inasmuch as Congress has taken definite action and removed the subject altogether from, and free of, State regulation. The language of the Act is sufficiently broad to cover demurrage or car-service charges on interstate shipments.¹⁷

The first section of the Act to Regulate Commerce after outlining the scope of the Commission's jurisdiction, defines "transportation," as including "all services in connection with the receipt, delivery, elevation, transfer in transit, * * * storage, and handling of property transported." This section as further strengthened by the amendment of June 18, 1910, makes it the duty of all common carriers subject to the provisions of the Act to establish, observe and enforce just and reasonable regulations and practices affecting rates, and all other matters relating to or connected with the receiving, handling, transporting, storing and delivery of property subject to the provisions of the Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation and delivery of property subject to the provisions of the Act upon just and reasonable terms, and prohibits every unjust and unreasonable regulation and practice with reference to commerce between the States and with foreign countries and declares the same to be unlawful. Section 6 provides that the carriers' schedules "shall also state separately

¹⁶ *Wabash, St. L. & P. Ry. Co. v. Illinois*, 118 U. S. 557, 30 L. ed. 244, 7 Sup. Ct. 4; *Rhodes v. Iowa*, 170 U. S. 412, 42 L. ed. 1088, 18 Sup. Ct. 664; *Bowman v. C. & N. W. Ry. Co.*, 125 U. S. 465, 31 L. ed. 700, 8 Sup. Ct. 689, 1062; *McNeill v. Southern Ry. Co.*, 202 U. S. 543 *supra*; *Central of Ga. Ry. Co. v. Murphey*, 196 U. S. 194, 49 L. ed. 444, 25 Sup. Ct. 218.

¹⁷ *Michie v. N. Y. N. H. & H. Rd. Co.*, 151 Fed. Rep. 694 (1907).

all terminal charges, storage charges, icing charges, and all other charges which the Commission may require."

Beyond all possibility of doubt, therefore, the duty of regulating terminal charges when related to interstate transportation has been lodged with the Interstate Commerce Commission, and Federal Courts have so held.¹⁸ The power of Congress to act with reference to this subject is undisputable; that Congress has made provision for the regulation of these charges is just as clear; and it follows necessarily that a State law which conflicts with the Federal statute must give way.¹⁹ The authority expressly conferred upon the Interstate Commerce Commission would be nugatory if the concurrent authority of the States were recognized. The Commission after investigation, may find the time for loading or unloading a particular commodity unreasonably small, and forbid the charging of demurrage at the expiration of that time and before the expiration of a reasonable time.²⁰

On March 16, 1908, the Commission decided that demurrage rules and charges applicable to interstate shipments are governed by the Act to Regulate Commerce and therefore are within its jurisdiction and not within the jurisdiction of State authorities.²¹ Any other view would open a wide door for the use of such rules and charges to effect the discrimination which the Act prohibits. Demurrage rules and charges must be observed as strictly as transportation rules and charges. The Commission cannot, therefore, recognize as lawful, any rule governing demurrage, the application of which is dependent upon the judgment or discretion of some person or which provides for exemption therefrom in certain exigencies in the creation of which the carrier has no part.²²

For instance, the regulations adopted by the Ohio Railroad

¹⁸ *United States v. Standard Oil Co.*, 148 Fed. Rep. 719; *Michie v. N. Y. N. H. & H. Rd. Co.*, 151 Fed. Rep. 694.

¹⁹ See note 14, *supra*.

²⁰ *Pennsylvania Millers' State Association v. P. & R. Ry. Co. et al.*, 8 I. C. C. R. 531 (1900).

²¹ Rule 223, Con. Rul. Bul. No. 4 (May 12, 1908).

²² *Ibid*.

Commission with reference to car service are invalid as to interstate shipments over interstate commerce railways, but as to intrastate commerce they are valid and enforceable.²³

§ 283. Demurrage Charges and Regulations affecting Interstate Shipments Must be Shown in Published Schedules of Carriers.

¶ A. IN GENERAL.

The Act to Regulate Commerce requires that carriers subject thereto shall publish, post, and file "all terminal charges * * * which in any wise change, affect, or determine * * * the value of the service rendered to the passenger, shipper, or consignee,"²⁴ and all such charges become part of the rates, fares and charges²⁵ which the carriers are required to demand, collect and retain. Such terminal charges include demurrage charges.²⁶

¶ B. FAILURE OF CARRIER TO MAKE REFERENCE IN TARIFF OF RATES TO CAR-SERVICE TARIFF.

In a particular case²⁷ the car-service tariff which named the demurrage rules was properly filed and posted and was well known to the shippers. It was enforced against the public generally. The tariff of rates did specify that the movement of traffic thereunder would be subject to car-service rules, and only those filed and published therefore could apply. The mere failure to refer by number to the car-service tariff in the tariff of rates could in no way relieve the complainant shipper from the payment of demurrage.

²³ Ann Arbor Rd. Co. et al. v. Railroad Commission of Ohio (1909), 8 Nisi Prius Report 233.

²⁴ Act to Regulate Commerce. Section 6.

²⁵ Act to Regulate Commerce. Section 6.

²⁶ See note 21, supra.

²⁷ Cudahy Packing Co. v. C. & N. W. Ry. Co., 12 I. C. C. R. 446 (1907).

§ 284. Demurrage Charges must be Just and Reasonable.

¶ A. IN GENERAL.

The United States Circuit Court in the District of Massachusetts held that the provisions of the Act to Regulate Commerce requiring for the transportation and for the "receipt, delivery, storage, and handling"²⁸ of property by an interstate carrier to be just and reasonable, and prohibiting discrimination, are sufficiently broad to cover demurrage charges on interstate shipments.²⁹ If demurrage charges are made to commence before the expiration of a reasonable time for loading or unloading, this may be a violation of the above section of the Act referred to.³⁰

This contention is further strengthened by the amendment of June 18, 1910, which makes it the duty of all common carriers subject to the provisions of the Act to establish, observe and enforce just and reasonable regulations and practices affecting rates, and all other matters relating to or connected with the receiving, handling, transporting, storing and delivery of property subject to the provisions of the Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation and delivery of property subject to the provisions of the Act upon just and reasonable terms, and prohibits every unjust and unreasonable regulation and practice with reference to commerce between the States and with foreign countries and declares the same to be unlawful.^{30a}

¶ B. REASONABLENESS OF CHARGE OF \$1 PER CAR PER DAY.

A demurrage or car-service charge of \$1 per car per day has been held as a general proposition not to be unreasonable, by both the Federal Court and the Commission; deductions being made for holidays and Sundays and inclement weather.³¹

²⁸ Act to Regulate Commerce. Section 1.

²⁹ See note 17, *supra*.

³⁰ See note 20, *supra*.

^{30a} Act, Section 1 (as amended June 18, 1910).

³¹ *McBride C. & C. Co. v. C. St. P. M. & O. Ry. Co.*, 13 I. C. C. R. 571; *Kehoe & Co. v. C. & W. C. R. Co.*, 11 I. C. C. R. 166; *St. Louis Hay REGULATION—29.*

¶ C. CASE WHERE DEMURRAGE CHARGE OF \$5 PER DAY FOR THE
DETENTION OF REFRIGERATOR CARS HAS BEEN HELD TO
BE NOT UNREASONABLE.

In the case of *Waxelbaum & Co. v. A. C. L. R. R. Co. et al.*,³² the defendant carriers were engaged in the transportation of peaches in iced refrigerator cars from points in the Georgia peach belt to various markets in the North and Northeast, viz., Washington, D. C., Baltimore, Md., Philadelphia, Pa., New York City, etc. Carriers assessed a penalty of \$5.00 per car per day for an excess time over twenty-four (24) hours that cars were detained by the shippers; the reasonableness of which charge was in dispute. The Commission stated that the transportation of peaches involves elements of extraordinary hazard to the carriers. Weather conditions vary to such an extent that the crop is liable to be so retarded that cars which have been assembled for the movement will be left idle on the sidetracks for a considerable period of time, involving more or less loss. On the other hand, when the weather is propitious, peaches ripen so rapidly as to make it imperative that equipment be furnished almost immediately. In that case if the carriers have fallen short in their estimates and have not available at the loading points sufficient equipment for handling the peaches offered, they may be liable for resulting losses. The average amount of ice actually used in the refrigeration of a car of peaches, including the initial icing and reicing at all points en route between the peach orchards in Georgia and New York is 20,398 pounds, found by actual test of 603 cars made by inspectors for this purpose by the Commission. This, of course, would not include the ice lost by melting

& Grain Co. v. C. B. & Q. R. Co. et al., 11 I. C. C. R. 82; *Michie v. N. Y. N. H. & H. Rd. Co.*, 151 Fed. Rep. 694; *Miller v. Mansfield*, 112 Mass. 260; *Miller v. Georgia R. R. Co.*, 88 Ga. 563; 15 S. E. 316; 18 L. R. A. 323; 30 Am. St. Rep. 170; *Kentucky Wagon Mfg. Co. v. Ohio & M. Ry. Co.*, 98 Ky. 152; 32 S. W. 595; 36 L. R. A. 850; 56 Am. St. Rep. 326; *Schumacher v. C. & N. W. Ry. Co.*, 207 Ill. 199; 69 N. E. 825; *Norfolk & Western v. Adams*, 90 Va. 393; 18 S. E. 673; 22 L. R. A. 530; 44 Am. St. Rep. 916; *Penna. R. R. Co. v. Midvale Steel Co.*, 201 Pa. 624; 51 Atl. 313; 88 Am. St. Rep. 836.

³² *Waxelbaum & Co. v. A. C. L. et al.*, 12 I. C. C. R. 178 (1907).

while being transported or handled as freight, and it appears that the total cost of the ice used for refrigerating a car of peaches should be reckoned on the basis of twelve tons.

The Commission held that they were not convinced that the charge of \$5.00 per day for detention of refrigerator cars by shippers after the expiration of twenty-four hours subsequent to the placing of same for loading was shown to be unreasonable in view of all the circumstances and the nature of the services necessary in the handling of this particular traffic.

§ 285. Difference in Free-Time Allowance based on the Nature and Character of the Commodity.

There is no violation of Section 2 of the Act which prohibits unjust discrimination, by the fact that on all commodities besides the "96-hour commodities" only 48 hours "free-time" is allowed by carriers at Philadelphia, and on coal, coke, pig iron and iron ore 72 hours are allowed at interior points, while only 48 hours are allowed on the other traffic at interior points. Section 2 prohibits unjust discrimination in "the transportation of a *like kind of traffic*," and does not only apply where the traffic is of different kinds or classes not competitive with each other.³³

§ 286. Duty of Shipper or Consignee to pay Demurrage Charges.

The shipper should pay the lawfully published charges applicable via the route over which the shipment moves; and make claim for refund if he believes he has been overcharged. The Commission will not include ordinarily in reparation award demurrage charges which accrued pending adjustment or subsequent to consignee's refusal to accept the shipment and pay the lawful charges thereon, but in special cases such demurrage charges may be included in the amount of refund.

It is the duty of the consignee to pay demurrage charges

³³ Amer. Warehousemen's Association v. Ill. Cent. Rd. Co. et al., 7 I. C. C. R. 556 (1898).

as per lawful tariffs, pending dispute, and then make claim for refund. Demurrage charges accruing because of error of a carrier are considered in the same light as are other additional transportation charges caused by carrier's error; and if adjusted, the full expense thereof must be borne by the carrier whose agent is responsible for the error.

When the delivering carrier demands more than the lawfully published rate via the route over which the shipment moved, the consignee is released from the obligation to pay demurrage charges during the pendency of the dispute as to the lawful rate.³⁴

§ 287. Duty of Carriers to collect Demurrage Charges.

Demurrage charges accruing because of error of a carrier are considered in the same light as are other additional transportation charges caused by carrier's error; and if adjusted, the full expense thereof must be borne by the carrier whose agent is responsible for the error. It is the duty of the carrier to collect, and of the consignee or shipper to pay, demurrage charges assessed as per lawful tariffs, although such charges may have accrued as the result of error on the part of some other carrier.³⁵

§ 288. Case in Which Consignee is relieved from Payment of Demurrage Charges.

When the delivering carrier demands more than the lawfully published rate via the route over which the shipment moved, the consignee is released from the obligation to pay demurrage charges during the pendency of the dispute as to the lawful rate.³⁶

³⁴ Rule 81, Tariff Circular 15-A; Rule 32 Con. Rul. Bul. No. 4 (Feb. 3, 1908).

³⁵ Ibid.

³⁶ Rule 32, Con. Rul. Bul. No. 4 (Feb. 3, 1908). This ruling was made basis of decision in *Porter et al. v. St. L. & S. F. Rd. Co.*, 15 I. C. C. R. 1.

§ 289. Assessment of Demurrage on Privately-Owned Cars.

¶ A. IN GENERAL.

The Commission decided in case No. 933, "*In the Matter of Demurrage Charges on Privately-owned Tank Cars*,"³⁷ that private cars owned by shippers and hired to carriers upon a mileage basis are subject to demurrage when said cars stand upon the tracks of the carrier either at point of origin or destination of shipment, but are not so subject when upon either the private tracks of the owner of the car or the private track of the consignee. The carrier must charge demurrage in all cases where such demurrage is imposed by tariff provision upon its own equipment, except when a privately-owned car is upon a privately-owned siding or track and the carrier is paying or is responsible for no rental or other charge upon such car.³⁸

A private sidetrack is one which is not owned by the railroad, is outside the carrier's right of way, yards, or terminals, and to which the railroad has no right of use superior to the right of the shipper. This definition is based upon consideration of the carrier's right to the use of the track rather than the ownership of the land or rails.³⁹

A private car is a car owned and used by an individual, firm, or corporation for the transportation of the commodities which they produce or in which they deal. It will include also cars owned and leased to shippers by private corporations.⁴⁰

The rule as to demurrage charges on private tank cars is applicable to all other private cars used by the railroads and paid for on a mileage basis.⁴¹

A private car owned by one shipper but used with his consent by another shipper dealing in a different commodity is

³⁷ *In the Matter of Demurrage Charges on Privately Owned Tank Cars*, 13 I. C. C. R. 378.

³⁸ Rule 223, Con. Rul. Bul. No. 4 (April 13, 1908).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Rule 223, Con. Rul. Bul. No. 4 (April 13, 1908).

not a private car as that phrase has been defined and used by the Commission in connection with demurrage charges.⁴²

¶ B. CASE IN WHICH DEMURRAGE WAS HELD TO BE REASONABLE WHEN ASSESSED AGAINST CARS WHICH WERE DETAINED ON A SIDING OWNED AND OPERATED BY THE CARRIER AND USED EXCLUSIVELY BY THE COMPLAINANT.

In the case of *Cudahy Co. v. C. & N. W. Ry. Co.*,⁴³ the Commission decided that the defendant's right to exact demurrage charges from the complainant on cars used by the defendant in transporting complainant's traffic while the cars are standing on a siding owned and operated by the defendant, which was constructed by it for the sole use of the complainant, is not affected by the fact that the cars are owned by the latter, that the purpose of demurrage charges is to compel the prompt unloading and release of cars, and this is not only for the purpose of securing the use of the equipment, but also of relieving the tracks upon which that equipment must stand.

Indeed, the congestion of the terminal is often a more serious matter for the railway than the mere loss of the use of the cars. It would appear reasonable, therefore, that railways should be allowed to charge demurrage upon private cars when standing upon the tracks of the railway and the Commission so held.

¶ C. DEMURRAGE ON PRIVATE CARS TEMPORARILY OUT OF SERVICE STANDING ON THE CARRIER'S STORAGE TRACKS.

Demurrage is a charge for detention to cars that have been set by carriers for loading or for unloading. Private cars are subject to demurrage rule the same as is the carrier's equipment except when the private car is standing on the private sidetrack. It is not necessary to charge demurrage either on carrier's equipment or private cars when same are temporarily out of service and standing idle upon the storage tracks

⁴² Rule 122, Con. Rul. Bul. No. 4 (Nov. 14, 1908).

⁴³ See note 27, *supra*.

of the carrier unless provision for such charge is included in carrier's demurrage rules.⁴⁴

A private car owned by one shipper but used with his consent by another shipper dealing in a different commodity is not a private car as that phrase has been defined above.⁴⁵

§ 290. Demurrage Charges accruing pending Controversy between Shipper and Carrier.

¶ A. DISPUTE AS TO THE METHOD OF PAYING FREIGHT CHARGES.

A shipper who had customarily paid his freight charges in checks was called upon, under a general order issued by the carrier, to pay his freight charges in cash during the financial disturbances of 1907-1909. While the local agent was endeavoring to get authority from the home office of the carrier to continue to accept checks from this shipper demurrage charges accrued. The Commission *Held*, That they could not lawfully be refunded.⁴⁶

In another case the Commission held that, regardless of a carrier's reasons for canceling a credit account, it is undoubted that it may demand its legal charges before delivering freight, and demurrage accruing during a controversy as to such payment can not be refunded on that ground alone, but it must be shown that the charges are unreasonable or unjustly discriminatory.^{46a}

¶ B. DISPUTE AS TO THE REASONABLENESS OF ESTABLISHED RATES.

It is the duty of carriers and shippers to observe the established rates, and there can be no waiver of demurrage charges which accrued by reason of the refusal of consignee to accept shipments and unload cars pending a contest or dispute as to the reasonableness of the established rates.⁴⁷

⁴⁴ Rule 123, Con. Rul. Bul. No. 4 (Nov. 14, 1908).

⁴⁵ Rule 122, Con. Rul. Bul. No. 4 (Nov. 14, 1908).

⁴⁶ Rule 39, Con. Rul. Bul. No. 4 (March 3, 1908).

^{46a} *Fisk & Son v. B. & M. R. R.* (1910), 19 I. C. C. R. 299.

⁴⁷ *Coomes & McGraw v. C. & St. P. Ry. Co.*, 13 I. C. C. R. 192 (1908).

**§ 291. Demurrage Charges accruing pending Controversy
between Connecting Carriers.**

**¶ A. DEMURRAGE CHARGES ACCRUING ACCOUNT DISAGREEMENT
BETWEEN CARRIERS UNDER RECONSIGNMENT TARIFF.**

Where a carrier provides in its tariff for reconsignment without any requirement for prepayment of freight or guaranty of the same it may not lawfully charge demurrage for the time during which it holds the shipment while parleying with its connections as to advancement of its freight charges.⁴⁸

**¶ B. DEMURRAGE CHARGES ACCRUING PENDING DISPUTE BETWEEN
CONNECTING CARRIERS ON QUESTION OF DIVISIONS.**

The Commission has awarded reparation to cover demurrage charges which accrued because of the refusal of the delivering line to receive a car from its connections, where there were no established divisions between such carriers and where both such carriers were a party to the through route and rate. The Commission held, that the fact that the carriers by which the rate had been lawfully published and advertised to the shipping world as the cost of transportation between two given points over all reasonably available routes, have neglected or failed to agree upon divisions of the rate over one of the routes cannot be accepted as equivalent to a nullification of the published through rate over that route. That divisions are matters of private agreement between carriers and for that reason, generally speaking, are of no special concern to shippers, nor are they essential to legalize a published through rate. It is clear that the additional charges imposed upon the shipment resulted from no neglect or fault on the part of the shipper.⁴⁹

⁴⁸ Beekman Lumber Co. v. St. L. & S. W. Ry. Co. et al., 14 I. C. C. R. 532 (1908).

⁴⁹ Germain Co. v. N. O. & N. E. Rd. Co. et al., 17 I. C. C. R. 22.

¶ C. DEMURRAGE CHARGES ACCRUING AT DESTINATION ACCOUNT
REFUSAL OF THE SWITCHING ROAD TO ACCEPT CAR WITH
ADVANCE CHARGES THEREON.

A shipment was forwarded with instructions to give delivery on a certain road. The car moved over the proper route to destination and was tendered for switching to the road indicated in delivery directions. Under long-established custom, it declined to assume responsibility for charges on the shipment and refused to accept the car until transportation charges had been paid. The carrier that brought the car in mailed a notice to the address of consignee, who was not known, and before the difficulty was straightened out demurrage accrued. The Commission *Held*, That the demurrage charges lawfully accrued and should stand.⁵⁰

§ 292. Demurrage Charges on "Astray" Shipments.

An astray shipment of perishable merchandise was not rebilled to its proper destination, but was sold by the consignee at the point where he found it. The delivering carrier at that point had assessed demurrage charges before the shippers were able to locate the car. That carrier expressed its willingness to waive the demurrage if the Commission would permit.⁵¹ The Commission decided that where a shipment is billed to an erroneous destination through error or oversight on the part of some agent or employé, the carrier may in bona fide instances of this kind return such shipments to their proper destination or course without the assessment of additional charges, and may arrange for such movement of such astray shipments for each other on mutually acceptable terms without the necessity of publishing, posting, and filing tariffs under which it will be done.⁵²

§ 293. Demurrage Charges resulting from Strikes.

The Commission has no power to relieve carriers from the

⁵⁰ Rule 144, Con. Rul. Bul. No. 4 (Feb. 8, 1909).

⁵¹ Rule 31, Con. Rul. Bul. No. 4 (Jan. 15, 1908).

⁵² Rule 74, Tariff Circular 15-A.

obligations of tariffs providing for demurrage charges, on the ground that such charges have been occasioned by a strike.⁵³

§ 294. Demurrage on F. O. B. Shipments.

"A" purchased a carload of lumber F. O. B. at the milling point. Demurrage accrued on account of the failure of "B" the mill owner, to promptly load the car. Carrier inadvertently delivered the car to "A" without collecting the demurrage. Upon its inquiry as to whether to demand the demurrage from A or B: *Held*, That the demurrage must be collected by the carrier either from the vendor or the vendee, but that the Commission cannot undertake to investigate the facts and determine for the carrier whether the vendor or the vendee is liable for the charges.⁵⁴

§ 295. Car-Service Charges on Traffic from and to Canada.

With respect to traffic between points in Canada and points in the United States, the Commission does not waive the requirement that carriers shall file tariffs showing their terminal charges and that such charges must either appear specifically in the tariffs naming the rates or the tariffs establishing such charges must be specifically referred to in the tariffs naming the rates.⁵⁵

§ 296. Reciprocal Demurrage Considered.

¶ A. RECIPROCAL DEMURRAGE DEFINED.

Reciprocal car service is an attempt to balance the delinquencies of carrier and shipper by reciprocal penalties. It provides that for delay in placing a car for loading or unloading the carrier shall forfeit for each day of such delay, a sum equal to that assessed against the receiver or shipper for undue detention after placing. To illustrate: Working under a reciprocal car-service arrangement, "A" orders a car for loading; if it be not placed for him until five days after

⁵³ Rule 8, Con. Rul. Bul. No. 4 (Nov. 18, 1907).

⁵⁴ Rule 96, Con. Rul. Bul. No. 4 (Oct. 12, 1908).

⁵⁵ Rule 191, Con. Rul. Bul. No. 4 (June 14, 1909).

order has been given, the railroad company credits him with three days' car service; the carrier being allowed the same free time as is usually allowed the shipper. In the event A is assessed for detention of cars, this credit is applied. In some places reciprocal car service goes even further and assumes to penalize the carrier for delays in transit.⁵⁶ This method of assessing car service, however, is not extensively in force.

¶ B. JURISDICTION OF INTERSTATE COMMERCE COMMISSION.

The Commission is without authority to fix rules or regulations governing reciprocal demurrage.⁵⁷

¶ C. RECIPROCAL CAR DEMURRAGE CONSIDERED AS A REMEDY FOR CAR SHORTAGE.

See *Section 176, ante*.

§ 297. Waiver of Demurrage Charges by Carriers.

¶ A. DISCRIMINATION BETWEEN SHIPPERS IN WAIVER OF DEMURRAGE CHARGES.

Where a carrier undertakes to make any concession in the collection of demurrage charges from shippers, it must grant such privileges to all shippers alike under the same or similar circumstances and conditions.⁵⁸

¶ B. CARRIERS MUST SHOW IN PUBLISHED SCHEDULES ANY RULE SUSPENDING OR WAIVING COLLECTION OF DEMURRAGE CHARGES.

Charges made by carriers for transportation and terminal services, and all rules and regulations which in any wise change, affect or determine the aggregate compensation paid therefor, are required by the statute⁵⁹ to be shown upon their published rate schedules; and under such requirement it is the duty of all carriers subject to the Act to not only publish

⁵⁶ See note 4, *supra*.

⁵⁷ *Mason v. C. R. I. & P. Ry. Co.*, 12 I. C. C. R. 61 (1907).

⁵⁸ See note 33, *supra*.

⁵⁹ Act to Regulate Commerce. Section 6.

their demurrage charges, but any rule or regulation which makes any concession or affects a suspension of the collection of such charges.⁶⁰

¶ C. DEMURRAGE CHARGES WAIVED ACCOUNT INCLEMENT WEATHER AND THE ACTION OF THE ELEMENTS.

The Commission has decided that it is not permissible for carriers to provide that demurrage *may* be refunded or waived in case of inclement weather and leave it to the judgment of some person to determine what constitutes inclement weather. It is permissible to provide that demurrage charges *shall* be waived or refunded in case of weather interference of such severity as to damage the freight in handling it into or from the car, or when shipment is frozen so as to prevent or seriously hinder unloading, or when because of floods or high water, or snowdrifts which it is the carrier's duty to remove, it is impracticable to get to car for loading or unloading.⁶¹

¶ D. DEMURRAGE CHARGES WAIVED ACCOUNT CARRIERS "BUNCHING" CARS.

There is nothing unreasonable or unlawful about a tariff rule which provides that in the event of the carrier's "bunching" a shipper's cars and delivering them in excess of shipper's facilities and ability to load or unload, demurrage will not accrue.⁶² Upon an informal complaint that cars were delayed in transit and delivered by a carrier in such number as to exceed the shipper's facilities for unloading within the free time: *Held*, That tariffs ought to contain a rule providing that when by fault of the carrier, cars are bunched in excess of the shipper's or consignee's ability to handle them within the free time, demurrage will not accrue. In the absence of such a rule the Commission can determine the reasonableness of such a practice only upon complaint filed.⁶³

⁶⁰ See note 33, *supra*.

⁶¹ Rule 135, Con. Rul. Bul. No. 4 (Jan. 27, 1909).

⁶² *American Creosoting Works v. Ill. Cent. Rd. Co. et al.*, 15 I. C. C. R. 160 (1909).

⁶³ Rule 142, Con. Rul. Bul. No. 4 (Feb. 8, 1909).

¶ E. DEMURRAGE CHARGES WAIVED UNDER SPECIAL CIRCUMSTANCES.

A sidetrack to an industry upon which a carrier had delivered 18 heavily loaded cars sank because of the marshy character of the roadbed: *Held*, That the carrier may refund demurrage collected for the necessary detention of the cars while the sidetrack was being rebuilt.⁶⁴

¶ F. WAIVER OF DEMURRAGE CHARGES WHERE SALE OF FREIGHT DOES NOT YIELD THE AGGREGATE TRANSPORTATION CHARGES.

A tariff contained a rule providing that: "When freight cannot be disposed of at point held for sufficient amount to realize by sale both freight and car service, or storage charges, demurrage charge may be refunded, waived, or canceled."

The Commission *Held*, That the performance of a transportation service determines the obligation of the carrier to collect and of the shipper to pay the published rates therefor and no subsequent fact, having no relation to the service can lawfully be made the basis for a refund or other departure from such rates. That the provision is therefore unlawful *per se* and cannot be accepted as authority for a waiver, refund, or cancellation of the tariff charges even as to a shipment made while the provision was contained in the published tariff.⁶⁵

This case must not be confused with the other cases of waiver of demurrage charges as reported *supra*. In the cases cited *supra*, the shipments had not yet come into the possession of the consignee and the demurrage charges were waived on account of circumstances beyond his control and before the carrier had completed the transportation service, while in the case under consideration the transportation service had been determined and the railroad's liability as a common carrier had ceased and it was simply occupying the position of warehouseman. Any waiver or refund therefore, of any part of the transportation charges would savor of rebating.

⁶⁴ Rule 117, Con. Rul. Bul. No. 4 (Nov. 13, 1908).

⁶⁵ Rule 145, Con. Rul. Bul. No. 4 (Feb. 8, 1909).

§ 298. Uniform Demurrage Rules.

In its recent annual report to Congress the Commission stated:⁶⁶ "It seems appropriate to refer to the adoption of a uniform code of car demurrage rules by the National Association of Railway Commissioners. As its name indicates, this association comprises the membership of all the railroad commissions of the United States, meeting in annual convention for the purpose of considering common problems. At the 1908 session the Committee on Car Distribution and Car Shortage submitted a report which reviewed the severe car shortage of the previous fall and pointed out that the breakdown of the country's transportation system at that time was chargeable in no small degree to the undue holding of cars by shippers and receivers of freight. As a step toward the improvement of existing conditions, it was recommended that a committee be appointed to draft a uniform code of car demurrage rules to be applicable alike on State and interstate traffic. This recommendation was unanimously adopted, and pursuant thereto a Committee on Car Service and Demurrage was appointed, consisting of a representative from the Railway Commission of each State and a member of this Commission. The work of this Committee was carried on with extreme care and thoroughness. Numerous conferences were held with expert car demurrage officials and a public hearing was called, at which representatives of shippers and carriers generally were present. The code as finally prepared represents a serious effort to approximate the needs of every part of the traffic world without making unnecessary concessions to the demands of particular localities or special interests. Perhaps the most characteristic features of the code are (1) the tendency to limit 'free time' to the actual requirements of the consignor and the consignee, and (2) the refusal to give recognition to rules which have been employed as instruments of discrimination. The code was adopted by the National Association of Railway Commissioners by a large majority, and has recently been indorsed by this Commission. Al-

⁶⁶ Twenty-Third Annual Report of I. C. C. (1909).

though these rules have encountered a certain amount of opposition, there are indications that they will be made generally effective throughout the United States as contemplated. A number of the State Commissions, as well as several of the leading Car Demurrage Bureaus, have already announced their intention to put the uniform code into immediate effect.

"It has been stated by competent authority that the general adoption and enforcement of demurrage rules allowing the smallest measure of "free time" consistent with the needs of the public will be equivalent to the addition of 100,000 cars to the country's available car supply. If this effort to standardize car demurrage regulations should meet with the success that is now promised, there is good reason for the belief that the efficiency of carriers will be greatly promoted, and that, incidentally, many unlawful advantages which powerful shippers have been able to secure through loose car-service rules will be eradicated.

"The divided control over commerce gives rise to many problems, the successful solution of which is dependent upon harmonious action on the part of the State and National authorities. The extraordinary development of transportation within the last half century has made all sections of the country peculiarly interdependent, and it is obvious that regulations which interfere with the efficiency of carriers in one section will influence traffic conditions in widely separated areas. This is strikingly illustrated by certain phases of the demurrage question. Railroad cars move freely to all parts of the country, often thousands of miles from the line of the owning road, and if, by means of local demurrage rules, such cars are indefinitely detained at a time when the carrier's services are most in demand—as in the fall, when the crops are being moved and the coal tonnage is most dense—a car famine will inevitably result. Cooperation between the Federal and State Railroad Commissions with a view to securing the maximum of transportation efficiency and at the same time assuring equal service to shippers and receivers in all parts of the country, so far as they may be possible, augurs well for the future of Government regulations."

Following is a copy of the demurrage rules approved by the National Association of Railway Commissioners, Nov. 17, 1909, and by the American Railway Association, on January 27, 1910:

RULE 1.

Cars subject to Rules.

Cars held for or by consignors or consignees for loading, unloading, forwarding directions, or for any other purpose, are subject to these Demurrage Rules, except as follows:

- (a) Cars loaded with livestock.
- (b) Empty cars placed for loading coal at mines or mine sidings or coke ovens.
- (c) Empty private cars stored on carrier's or private tracks, provided such cars have not been placed or tendered for loading on the orders of a shipper.

NOTE.—Private cars while in railroad service, whether on carrier's or private tracks, are subject to these Demurrage Rules to the same extent as cars of railroad ownership.

(Empty private cars are in railroad service from the time they are placed by the carrier for loading or tendered for loading on the orders of a shipper. Private cars under lading are in railroad service until the lading is removed and cars are regularly released. Cars which belong to an industry performing its own switching service are in railroad service from the time they are placed by the industry upon designated interchange tracks and thereby tendered to the carrier for movement. If such cars are subsequently returned empty they are out of service when withdrawn by the industry from the interchange; if returned under the load, railroad service is not at an end until lading is duly removed.)

RULE 2.

Free Time Allowed.

(a) Forty-eight hours' (two days) free time will be allowed for loading or unloading on all commodities.

(b) Twenty-four hours' (one day) free time will be allowed:

- 1. When cars are held for reconsignment or switching orders.
- 2. When cars destined for delivery to or for forwarding by a connecting line are held for surrender of bill of lading or for payment of lawful freight charges.
- 3. When cars are held in transit and placed for inspection or grading.

(c) Cars containing freight for transshipment to vessel will be allowed such free time at the ports as may be provided in the tariffs of the carrier.

RULE 3.

Computing Time.

NOTE.—In computing time, Sundays and legal holidays (National, State and Municipal) will be excluded. When a legal holiday falls on a Sunday, the following Monday will be excluded.

(a) On cars held for loading, time will be computed from the first 7:00 a. m. after placement on public delivery tracks.

(b) On cars held for orders, time will be computed from the first 7:00 a. m. after the day on which notice of arrival is sent to consignee. On cars held for unloading, time will be computed from the first 7:00 a. m. after placement on public delivery tracks and after the day on which notice of arrival is sent to consignee.

(c) On cars containing freight in bond, time will be computed from the first 7:00 a. m. after permit to receive goods is issued to consignees by United States Collector of Customs.

(d) On cars containing freight subject to State inspection, time will be computed from the first 7:00 a. m. after inspection by State officials.

(e) On cars to be delivered on any other than public delivery tracks, time will be computed from the first 7:00 a. m. after actual or constructive placement on such tracks. See Rule 4 (Notification) and Rules 5 and 6 (Constructive placement).

(f) On cars to be delivered on interchange tracks of industrial plants performing their own switching service, time will be computed from the first 7:00 a. m. following actual or constructive placement on such interchange tracks until return thereto. See Rule 4 (Notification) and Rules 5 and 6 (Constructive placement). Cars returned loaded will not be recorded released until necessary billing instructions are given.

RULE 4.

Notification.

(a) Consignee shall be notified by carrier's agent in writing or as otherwise agreed to by carrier and consignee, within 24 hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initials and numbers, and the contents, and, if transferred in transit, the initials and number of the original car. In case car is not placed on public delivery track within twenty-four hours after notice of arrival has been sent, a notice of placement shall be given to consignee.

(b) When cars are ordered stopped in transit the party ordering the cars stopped shall be notified upon arrival of cars at point of stoppage.

(c) Delivery of cars upon private or industrial interchange tracks, or written notice to consignee of readiness to so deliver, will constitute notification thereof to consignee.

RULE 5.

Placing Cars for Unloading.

(a) When delivery of cars consigned or ordered to private or industrial interchange tracks cannot be made, on account of the act or neglect of the consignee, or the inability of the consignee to receive, delivery will be considered to have been made when the cars were tendered. The carrier's agent must give the consignee written notice of all cars he has been unable to deliver because of the condition of the private or interchange tracks or because of other conditions attributable to consignee. This will be considered constructive placement. See Rule 4 (Notification).

(b) When delivery cannot be made on specially designated public delivery tracks, on account of such tracks being fully occupied, or from other cause beyond the control of the carrier, the delivery will be made at the nearest available point accessible to the consignee and the consignee so notified.

RULE 6.

Cars for Loading.

(a) Cars for loading will be considered placed when such cars are actually placed or held on orders of the consignor. In the latter case the agent must give the consignor written notice of all cars which he has been unable to place because of condition of the private track or because of other conditions attributable to the consignor. This will be considered constructive placement.

(b) When empty cars, placed for loading on orders, are not used, demurrage will be charged from the first 7:00 a. m. after placing or tender until released, with no time allowance.

RULE 7.

Demurrage Charge.

After the expiration of the free time allowed, a charge of \$1.00 per car per day, or fraction of a day, will be made until car is released.

RULE 8.

Claims.

No demurrage charges shall be assessed under these rules for the detention of cars through causes named below. If, through error, demurrage charges are assessed or collected under such conditions, they shall be promptly cancelled or refunded by the carrier.

Causes.

(a) Weather interference.

1. When the condition of the weather during the prescribed free time is such as to make it impossible to employ men or teams in loading or unloading, or impossible to place freight in cars, or to move it from cars, without serious injury to the freight.

2. When shipments are frozen so as to prevent unloading during the prescribed free time, or when, because of high water or snow drifts, it is impossible to get to cars for loading or unloading during the prescribed free time.

(b) Bunching.

1. *Cars for loading.*—When, by reason of delay or irregularity of the carrier in filling orders, cars are bunched and placed for loading in accumulated numbers in excess of daily orders. The shipper shall be allowed such free time for loading as he would have been entitled to had the cars been placed for loading as ordered.

2. *Cars for unloading or reconsigning.*—When, as a direct result of

the act or neglect of carriers, cars destined for one consignee, at one point, and transported via the same route, are bunched in transit and delivered in accumulated numbers in excess of daily shipments, claim to be presented to the carrier's agent before the expiration of the free time. The consignee shall be allowed such free time as he would have been entitled to had the cars been delivered in accordance with the daily rate of shipment.

(c) Demand of overcharge.

When the carrier's agent demands the payment of transportation charges in excess of tariff authority.

(d) Delayed or improper notice by carrier.

NOTE.—When notice has been given in substantial compliance with the requirements as specified by the rules, the consignee shall not thereafter have the right to call in question the sufficiency of such notice unless within twenty-four hours after receiving the same he shall serve upon the delivering carrier a full written statement of his objections to the sufficiency of said note.

(e) Railroad errors or omissions.

RULE 9.

Average Agreement.

When a shipper or receiver enters into the following agreement, the charge for detention to cars, provided for by Rule 7, on all cars held for loading or unloading by such shipper or receiver shall be computed on the basis of the average time of detention to all such cars during each calendar month, such average detention to be computed as follows:

(a) A credit of one day will be allowed for each car released within the first twenty-four hours of free time. A debit of one day will be charged for each twenty-four hours or fraction thereof that a car is detained beyond the first forty-eight hours of free time. In no case shall more than one day's credit be allowed on any one car, and in no case shall more than seven (7) days' credits be applied in cancellation of debits accruing on any one car.

(b) At the end of the calendar month the total number of days credited will be deducted from the total number of days debited, and \$1.00 per day charged for the remainder. If the credits equal or exceed the debits no charge will be made for the detention of the cars, and no payment will be made to shippers or receivers on account of such excess of credits, nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month.

(c) Credits earned on cars belonging to one class of equipment shall not be used in offsetting debits accruing on cars belonging to a different class of equipment. For the purpose of applying this provision, cars shall be deemed to consist of two classes: (1) Box cars, including refrigerator cars; (2) freight cars of all other descriptions.

(d) A shipper or receiver who elects to take advantage of this average agreement shall not be entitled to cancellation or refund of demurrage charges under Sections a and b of Rule 8.

(e) A shipper or receiver who elects to take advantage of this average agreement may be required to give sufficient security to the carrier for the payment of balances against him at the end of each month.

Agreement.

To.....Railroad Company:

In accordance with the terms of Rule 9 of the.....Car Service Association, reading as follows:

(Insert Rule 9 in agreement.)

I (or we) do expressly agree with the above-named railroad company that I (or we) will make prompt payment of all car service charges accruing in accordance with such rule during the continuance of this agreement on cars held for loading or unloading by me (or us) or on my (or our) account at.....station of the above-named railroad company. This agreement is to take effect....., 19...., and to continue until terminated by thirty days' written notice to the railroad company.

Approved and accepted by and on behalf of the above-named railroad company by.....

CHAPTER XIX.

PAYMENT FOR TRANSPORTATION.

SECTION

- 299. Provisions of the Statute governing Compensation for Transportation.
- 300. Nothing but Money can Lawfully be given in Payment for Transportation.
- 301. Lien of Carrier for Transportation Charges.
- 302. Obligation of Carrier to collect its Tariff Rate upon Delivery of Shipment.
- 303. Undercharges.
- 304. Repaying Advancements made by the Shipper for Construction of Switch Track.
- 305. Rates based on Declared Valuation.

§ 299. Provisions of the Statute governing Compensation for Transportation.

Section 2 of the Act to Regulate Commerce provides:

That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Section 6 of the Act to Regulate Commerce provides:

Nor shall any carrier charge or demand or collect or receive a greater or less or *different* compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

Section 1 of the Elkins Act provides that:

The willful failure upon the part of any carrier subject to said acts

to file and publish the tariffs or rates and charges as required by said acts, or strictly to *observe* such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to Regulate Commerce and acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to Regulate Commerce and acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly offer, grant, or give or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars.

§ 300. Nothing but Money can Lawfully be given in Payment for Transportation.

¶ A. IN GENERAL.

Nothing but money can be lawfully received or accepted in payment for transportation subject to the Act to Regulate Commerce, whether of passengers or property or for any service in connection therewith, it being the opinion of the Commission that the prohibition against charging or collecting a greater or less or *different* compensation than the established rate in effect at the time precludes the acceptance of services, property, or other payment in lieu of the amount of money specified in the public schedules. The law makes it clear that no carrier can lawfully apply to transportation over its line any rate or charge that is not plainly stated in its own tariff at the time.¹

A rate in order to be uniform in operation, must be expressed in dollars and cents, and to allow the carrier to accept part of its compensation in a commodity, or by way of compromising a claim, would open the door to illegal discriminations.²

¹ Rule 207, Con. Rul. Bul. No. 4 (Sept. 15, 1906); Rule 36, Tariff Circular 16-A.

² United States v. A. T. & S. F. Ry. Co. (1908), 163 Fed. Rep. 111.

¶ B. TRANSPORTATION IN EXCHANGE FOR ADVERTISING.

In *United States v. C. I. & L. Ry. Co.*³ the Government filed petition to prevent the defendant from giving transportation in exchange for advertising. The defendant had entered into a contract with *Munsey's Magazine* whereby it had agreed to allow that company trip tickets or mileage to a certain value to be used by the publisher, his employés, and their families. Under the contract, the transportation might have been demanded before the advertisement was published. In granting the injunction as prayed for, the Court held, that the trend of the law was for the most rigid enforcement of the rule requiring exact equalities in rates; that although rates might be paid by means of checks, drafts, and bills of exchange, or other instruments passing as cash, yet the proposed action of the defendant was contrary to the letter and spirit of the Act, and was illegal, especially since the facts presented not the settlement of a liquidated liability, but an agreement to settle a future one by means of transportation.

¶ C. OFFSET OF CLAIM OF SHIPPER AGAINST FREIGHT CHARGES.

A shipper having a money demand against an interstate carrier sought to offset it against the amount of a freight bill which he owed the carrier upon a shipment of merchandise. May this lawfully be done? *Held*, That the two transactions have no relation one to the other, and that such a deduction from the lawful charges on the shipment could not be made.⁴ Neither has the Commission any authority to offset such claims.⁵

§ 301. Lien of Carrier for Transportation Charges.

¶ A. CARRIER MAY REFUSE TO DELIVER THE SHIPMENT UNTIL
FULL TARIFF RATE IS PAID OR TENDERED.

Whatever rate may be agreed upon for the transportation of goods from one State to another, the carrier's lien on the

³ *United States v. C. I. & L. Ry. Co.* (1908), 163 Fed. Rep. 114.

⁴ Rule 48, Con. Rul. Bul. No. 4 (March 10, 1908).

⁵ *Pitt & Son v. St. L. & S. F. Rd. Co. et al.* (1905), 10 I. C. C. R. 684.

goods for freight charges is, by force of the Act to Regulate Commerce, for the amount fixed by the published schedule of rates and charges; and this lien can be discharged, and the consignee can become entitled to the goods, only by the payment of such amount.⁶

¶ B. RELINQUISHMENT OF LIEN BY CARRIER UPON BEING
INDEMNIFIED AGAINST LOSS.

The lien of carriers upon freight for charges earned is satisfied by the payment of rates for services which they are lawfully entitled to demand and a guaranty executed to a carrier by consignees or third parties, which might be construed to enable the carrier, in consideration of delivery before settlement of transportation charges, to exact for services rendered in moving and delivering the freight whatever it chooses to demand, cannot be used by the carrier to force payment of charges in excess of those it would be entitled to collect or receive if previous delivery had not been made.⁷ The Interstate Commerce Act does not recognize indefinite or uncertain transportation charges.⁸

¶ C. RIGHT OF CARRIER TO OFFSET OVERCHARGE ON ONE SHIPMENT AGAINST AN UNDERCHARGE ON ANOTHER.

Before it had returned an overcharge on one shipment the carrier discovered that it had inadvertently made an undercharge on another shipment by the same shipper, which he refused to pay. Upon inquiry by the carrier whether it could lawfully offset the overcharge against the undercharge: *Held*, That the Commission had no authority to control the disposition of an overcharge so long as the amount is passed by the carrier to the credit of the shipper.⁹

⁶ Texas & Pacific Ry. Co. v. Mugg (1906), 202 U. S. 242, 26 Sup. Ct. Rep. 628, 50 L. ed. 1011, following Gulf, C. & S. F. Rd. Co. v. Hefley, 158 U. S. 98, 39 L. ed. 910, 15 Sup. Ct. Rep. 802; see also Duncan v. A. T. & S. F. Rd. Co. et al. (1893), 6 I. C. C. R. 85, 4 I. C. R. 385.

⁷ Phelps & Co. v. T. & P. Ry. Co. (1893), 6 I. C. C. R. 36; 4 I. C. R. 363.

⁸ Ibid.

⁹ Rule 133, Con. Rul. Bul. No. 4 (Jan. 7, 1909).

§ 302. Obligation of Carrier to collect its Tariff Rate upon Delivery of Shipment.

A carrier may not demand or collect a greater or less or different compensation for the transportation of passengers or property than the rates specified in the tariff filed and in effect at the time of the movement (*section 6*); and under the Elkins Act (*section 1*) not only is it provided that the carriers shall strictly observe their tariffs, but that it shall be unlawful for any person or corporation to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to the act to regulate commerce. Here, then, is a statutory duty imposed upon the carrier to charge, and upon the shipper to pay, the rate fixed in the tariffs, and deviation from this rule subjects both carrier and shipper to fine or imprisonment. While it is the common-law rule that a cause of action does not accrue until actual payment has been made, so that there may be a basis in law for recovery, this rule is necessarily modified as to carriers subject thereto by the provisions of the act to regulate commerce. There can be no waiver on the part of a common carrier of its right to collect its tariff rates. It must, upon the delivery of a shipment, exact whatever rates its schedules necessitate or it is guilty under the law of granting a concession effecting a discrimination. Unless this position is taken by the Commission and such construction of the act given, there can be no such thing as a rebate so long as a running account is maintained between the shipper and the railroads.^{9a}

§ 303. Undercharges.

¶ A. DUTY OF DELIVERING CARRIER TO COLLECT AND OF SHIPPER TO PAY UNDERCHARGES.

The Commission has ruled that carriers must exhaust their

^{9a} *Blinn Lumber Co. v. Southern Pacific Co. et al.* (1910), 18 I. C. C. R. 430.

legal remedies to collect undercharges.¹⁰ Even though an undercharge results from an error in billing by the initial carrier or a connection, the delivering carrier must collect the undercharge.¹¹ The legal expense attending the efforts to collect undercharges in such cases would seem to be a valid claim against the carrier through whose fault the mistake was made.¹² Upon inquiry, the Commission *Held*, That it is the duty of the delivering carrier to collect the lawful rate on prepaid shipments and to correct any errors that may have been made by the agents of the initial carrier in billing or in the collection by the initial carrier of the prepaid charges.¹³

Upon the discovery that shipments have through mistake been moved at an unlawful rate the carrier should forthwith demand and the shipper should forthwith pay the difference between such unlawful rate and the legal rate applicable thereto.¹⁴ The duty of shippers to pay published rates is precisely the same as the duty of the carriers to collect such rates.^{14a}

¶ B. COMMISSION WITHOUT AUTHORITY TO COMPEL SHIPPERS
TO PAY UNDERCHARGES.

The Commission is without authority to enter an order requiring a shipper to make good an undercharge, but shippers must understand their liability under the law for the failure or refusal to pay the published rates.¹⁵

¶ C. COMMISSION NO AUTHORITY TO AWARD SET-OFF AGAINST
A SHIPPER IN FAVOR OF A CARRIER FOR UNDERCHARGES.

It seems obvious that the Commission has no authority to

¹⁰ Rule 3, Con. Rul. Bul. No. 4 (Nov. 4, 1907); Rule 187, Con. Rul. Bul. No. 4 (June 8, 1909).

¹¹ Rule 16, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

¹² *Ibid*.

¹³ Rule 156, Con. Rul. Bul. No. 4 (April 5, 1909).

¹⁴ *Bovaird Supply Co. v. A. T. & S. F. Ry. Co. et al.*, 13 I. C. C. R. 56.

^{14a} In the Matter of the Substitution of Tonnage at Transit Points (1910), 18 I. C. C. R. 280.

¹⁵ *Falls & Co. v. C. R. I. & P. Ry. Co. et al.* (1909), 15 I. C. C. R. 269.

award set-off. The Commission is not empowered to make an order requiring the complainant to pay money damages to a railroad company; it has no general common law or equity jurisdiction, but only such authority as is prescribed in the Act to Regulate Commerce. Generally speaking, the right to award set-off in an action at law is created by statute to avoid multiplicity of suits, but the right to make such award necessarily involves authority in the court to adjudicate the claims of both parties. It is clear that the Commission, whose authority is in the nature of an extraordinary remedy, is not authorized to adjudicate the claim of a railroad company against a shipper, but only the claim of a shipper against a railroad company for violation of the interstate commerce law. To award set-off amounts to the same thing as adjudicating the claim of the railroad against the shipper, and entry of an order based upon setoff could occur only after such adjudication. Plainly, if the Commission is without authority to determine the rights of the parties, it is also powerless to enter an order based upon a determination of those rights.¹⁶

§ 304. Repaying Advancements made by the Shipper for Construction of Switch Track.

The Commission has disapproved of the practice of some carriers of repaying advancements made by a shipper for the construction of a switch track by making an allowance to him of a definite amount on each carload of freight shipped to or from his manufacturing plant on the ground that such an arrangement presents too much the appearance of a purchase of property by the carrier with transportation, which is contrary to the principles of the Act.¹⁷

¹⁶ Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co. (1909), 15 I. C. C. R. 37.

¹⁷ Weleetka Light & Water Co. v. Ft. S. & W. R. Co., 12 I. C. C. R. 503 (1907).

§ 305. Rates based on Declared Valuation.

The agent of a shipper not knowing the value of a dog to be sent by express nevertheless named a valuation of \$500, and the resulting charges to destination amounted to \$45. The dog was actually worth \$15, and at this valuation the express charges would have been \$8. The consignee declined to accept delivery and pay the charges demanded. Upon inquiry whether the charges may be collected on the basis of the actual value of the dog, it was *Held*, That the shipper is responsible for the act of his agent and that the charges at the valuation given must be collected.¹⁸

¹⁸ Rule 188, Con. Rul. Bul. No. 4 (June 14, 1909).

CHAPTER XX.

LIMITATION OF CARRIER'S LIABILITY.

SECTION

- 306. Initial Carrier may not limit its Liability for Loss or Damage beyond its own Line.
- 307. Remedies existing at the Enactment of the Law not Barred.
- 308. Initial Carrier may have Recourse upon Carrier Responsible for Loss or Damage.
- 309. Constitutionality of the Statute making Receiving Carrier liable for Loss or Damage on Interstate Traffic.
- 310. Construction of the Statute.

§ 306. Initial Carrier may not limit its Liability for Loss or Damage beyond its own Line.

The Act to Regulate Commerce provides:¹ "That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed."

¹ Act to Regulate Commerce. Section 20, as changed by the Carmack Amendment to the Hepburn Bill of June 29, 1906. The joint resolution of Congress approved June 30, 1906, providing that the Hepburn Bill of June 29, 1906 (34 Stat. at L. 584, c. 3591), "shall take effect and be in force sixty days after its approval by the President of the United States," was ineffective to prevent such law from going into effect in accordance with its terms on the date of its approval by the President, which was the preceding day. (United States v. Standard Oil Co. (1907), 148 Fed. Rep. 719).

§ 307. Remedies existing at the Enactment of the Law not Barred.

The Act provides that nothing in the above section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.²

§ 308. Initial Carrier may have Recourse upon Carrier Responsible for Loss or Damage.

The statute provides:³ "That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

§ 309. Constitutionality of the Statute making Receiving Carrier liable for Loss or Damage on Interstate Traffic.

On February 28, 1908, the Circuit Court for the Western District of Arkansas held that the provision in the Hepburn Act, commonly called the Carmack amendment, which makes an initial carrier liable for loss, damage, or injury to through shipments, whether such losses occur on or off the line of the initial carrier, is constitutional; and that a clause in a bill of lading providing that an initial carrier's liability on an interstate shipment of goods transported over the lines of several carriers from point of origin to destination, shall be limited to losses occurring on its own line, is in conflict with the Carmack amendment.⁴

The Court said that Congress in adopting this amendment seems to have recognized the difficulty involved, on the part of shippers, when goods are lost, in tracing the goods, fixing the liability, and recovering their loss. It seems to have

² Ibid.

³ Ibid.

⁴ *Smeltzer v. St. L. & S. F. R. Co.* (1908), 158 Fed. Rep. 649; see also *Riverside Mills v. A. C. L. R. Co.* (1909), 168 Fed. Rep. 987.

recognized the additional fact that the facilities of the initial carrier are much greater than those of the shipper to locate the goods and fix the liability for loss or damage.⁵

The Court further declared that these provisions rest on substantial grounds of public policy which inspired this remedial legislation for the regulation of the immense volume of interstate commerce.⁶

Under the common law, independently of statute, where a common carrier receives property for carriage beyond its own line, issuing a through bill of lading therefor, specifying the freight for through carriage, it makes the connecting carriers its agents, and is responsible to the shipper for any loss or damage to such property, either on its own or the connecting lines, which liability it cannot limit by contract.⁷

§ 310. Construction of the Statute.

The Commission in answer to numerous inquiries has expressed its view of the legal effect of the above statute, as follows:⁸

I. If a rate is conditioned upon the shipper's assuming the risk of loss due to causes beyond the carrier's control, the condition is valid.

II. If a rate is conditioned upon the shipper's assuming the entire risk of loss, the condition is void as against loss due to the carrier's negligence or other misconduct.

III. If a rate is conditioned upon the shipper's agreeing that the carrier's liability shall not exceed a certain specified value—

(a) The stipulation is valid when the loss occurs through causes beyond the carrier's control.

(b) The stipulation is valid, even when the loss is due to the carrier's negligence, if the shipper has himself

⁵ *Smeltzer v. St. L. & S. F. R. Co.* (1908), 158 Fed. Rep. 649; see also *Riverside Mills v. A. C. L. R. Co.* (1909), 168 Fed. Rep. 987.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ In the *Matter of Released Rates* (1908), 13 I. C. C. R. 550, and cases there cited.

declared the value, expressly or by implication, the carrier accepting the same in good faith as the real value, and the rate of freight being fixed in accordance therewith.

(c) The stipulation is void as against loss due to the carrier's negligence or other misconduct if the specified amount does not purport to be an agreed valuation, but has been fixed arbitrarily by the carrier without reference to the real value.

(d) The stipulation is void as against loss due to the carrier's negligence or other misconduct if the amount specified, while purporting to be an agreed valuation, is in fact purely fictitious and represents an attempt to limit the carrier's liability to an arbitrary amount.

IV. A carrier may lawfully establish a scale of charges applicable to a specific commodity and graduated reasonably according to value. These rates must be applied in good faith, regard being had to the actual value of the property offered for shipment.

V. A carrier must not make use of its released rate as a means of escaping liability for the consequence of its negligence, either wholly or in part.

VI. It is a mischievous practice for carriers to publish in their tariffs and on their bills of lading rules and regulations which are misleading, unreasonable, or incapable of literal enforcement in a court of law.

VII. A stipulation that an additional charge of 20 per cent. shall be collected on property that is shipped not subject to limited liability is unreasonable.

CHAPTER XXI.

FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY.

SECTION

- 311. Free and Reduced-Rate Transportation for the United States, State or Municipal Governments.
- 312. Free and Reduced-Rate Transportation for Charitable Purposes.
- 313. Free and Reduced-Rate Transportation for Fairs and Expositions.
- 314. Free Baggage with Mileage Tickets.
- 315. Free Carriage of Company Material.
- 316. Return of Astray Shipments.
- 317. Rates on Return Shipments.
- 318. Movement of Shipments refused by Consignees or Damaged in Transit.
- 319. Transportation of Trucks of Cars destroyed on Foreign Lines
- 320. Coal used for Steam Purposes not Entitled to Reduced Rates.
- 321. Free Transportation of Supplies of Express Companies by Railroads.
- 322. Free Transportation of Railway Packages by Express Companies.
- 323. Free Transportation of Material for Erection of Refrigeration Plant not Owned by the Carrier.
- 324. Contracts between Telephone, Telegraph and Cable Companies and other Common Carriers.
- 325. Issuing of "Franks" by Express Companies to Officers, Agents, Employés and their Families declared Illegal.
- 326. Passes or Franks of Telegraph, Telephone and Cable Companies.

§ 311. Free and Reduced-Rate Transportation for the United States, State or Municipal Governments.

¶ A. IN GENERAL.

Section 22 of the Act to Regulate Commerce provides "That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or Municipal Governments." The Commission stated that, "This provision and the words 'reduced rates' are construed to be special authority for carriers to depart

REGULATION—31.

from established tariff rates; and for such transportation of property as is provided for in said Section 22, it is not necessary for carriers to provide tariffs or observe tariff rates and regulations.’¹

Reduced rates may be granted to the United States, State, or Municipal Governments only in instances in which the transaction is directly between the carrier and such Government, and may not include those in which a contractor or the third person or party is interested.²

If title to property, such as postal cards, passes to the Government at the point of manufacture, the carrier may agree upon a rate to be applied for transporting it for the Government to another point, without filing a tariff with the Commission. But if the manufacturer under his contract is required to deliver to the Government at such other point, the transportation must be under the published tariff rate. In other words, if the shipment is made directly by the Government, the rate may be fixed by the carrier without posting and filing the tariff, but not otherwise.³

¶ B. FREE AND REDUCED-RATE TRANSPORTATION OF FISH AND EGGS FOR UNITED STATES COMMISSION OF FISH AND FISHERIES.

In response to an inquiry from the United States Commissioner of Fish and Fisheries, the Interstate Commerce Commission stated that as the United States Commission of Fish and Fisheries is one of the agencies of the Government, and the distribution of fish and eggs by that Commission is by authority of the Government, the transportation of fish and eggs so distributed falls within the exception of Section 22 of the Act to Regulate Commerce, which permits the handling of property free or at reduced rates for the United States.⁴

¹ Rule 35, Tariff Circular 16-A.

² Rule 35, Tariff Circular 16-A; Rule 63, Tariff Circular 15-A; Rule 33, Con. Rul. Bul. No. 4 (Jan. 3, 1908).

³ Rule 36, Con. Rul. Bul. No. 4 (Feb. 4, 1908).

⁴ Re United States Commission of Fish and Fisheries, 1 I. C. C. R. 21; 1 I. C. R. 606 (1887).

¶ C. SPECIAL RATES FOR TRANSPORTATION OF INDIAN SUPPLIES.

It is lawful under the Act for a common carrier to offer to make special rates with individuals, in order that the latter may make proposals to the Interior Department for the transportation of Indian supplies, such transportation being "for the United States" and the Government receiving the benefit of the reduced rates.⁵

¶ D. REDUCED RATES FOR MUNICIPAL GOVERNMENTS IN FOREIGN COUNTRIES ADJACENT.

Upon inquiry: *Held*, That the reduced-rate transportation for municipal governments permitted under Section 22 of the Act does not apply to municipal governments in foreign countries adjacent.⁶

§ 312. Free and Reduced-Rate Transportation for Charitable Purposes.

The Act authorizes the carriage, storage, or handling of property free or at reduced rates for charitable purposes.⁷

§ 313. Free and Reduced-Rate Transportation for Fairs and Expositions.

The Act authorizes the carriage, storage, and handling of property free or at reduced rates to or from fairs and exposition for exhibitions thereat.⁸

The Commission has held that specimens of ore that are not to be offered for sale but that are intended exclusively for exhibition (in this case at the Chamber of Mines at Los Angeles) may be carried free of charge or at reduced rate under Section 22 of the Act.⁹ So it has been held that a museum of natural history, erected in a public park by private subscription and supported partly by taxes and partly by the income of funds contributed by citizens, may be given free

⁵ Re Indian Supplies, 1 I. C. R. 22; 1 I. C. C. R. 15.

⁶ Rule 118, Con. Rul. Bul. No. 4 (Nov. 13, 1908).

⁷ Act to Regulate Commerce. Section 22.

⁸ Ibid.

⁹ Rule 176, Con. Rul. Bul. No. 4 (May 4, 1909).

or reduced-rate transportation under Section 22 of the Act on articles intended for exhibition therein, notwithstanding the fact that as a means of securing additional income it charges an admission fee on certain days of the week, admission being free on other days.¹⁰

§ 314. Free Baggage with Mileage Tickets.

The Act authorizes the granting of special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles.¹¹

§ 315. Free Carriage of Company Material.

¶ A. IN GENERAL.

It is not unlawful for a carrier to return its own property free of charge, to the manufacturers thereof situated on its own line, for exchange or repair.¹²

¶ B. TRANSPORTATION FOR EATING HOUSES OPERATED BY OR FOR CARRIERS.

Carriers subject to the Act may provide at points on their lines, eating houses for passengers and employes of such carriers, and property for use of such eating houses may properly be regarded as necessary and intended for the use of such carriers in the conduct of their business. Such eating houses, however, must not serve the general public or any portion thereof, with food prepared from commodities which have been carried at less than the full published rate, and no utensils, fuel, or servants at all employed in serving others than passengers and employes of the carriers as such should be carried at less than tariff rates. Such privilege as may be extended under this rule shall be applied only as to points local to the line on which the eating house is situated.¹³

¹⁰ Rule 185, Con. Rul. Bul. No. 4 (June 7, 1909).

¹¹ See note 8, *supra*.

¹² Rule 22, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

¹³ Rule 87, Con. Rul. Bul. No. 4 (June 25, 1908).

§ 316. Return of Astray Shipments.

Instances occur in which, through error or oversight on the part of some agent or employé of the common carrier, a shipment is billed to an erroneous destination or is unloaded short of destination or is carried by. The Commission stated that it is of the opinion that in bona fide instances of this kind carriers may return such astray shipments to their proper destination or course without the assessment of additional charges, and may arrange for such movement of such astray shipments for each other on mutually acceptable terms without the necessity of publishing, posting, and filing the tariffs under which it will be done.¹⁴

§ 317. Rates on Return Shipments.

A shipment of mining machinery went to destination over the lines of one carrier and was subsequently returned for repairs over the line of another carrier. The published tariff, to which all carriers participating in both movements were parties, provides for half rates on such return movements when over the same route as the original outbound movement. A portion of the route of the return movement was over the line of a carrier which also formed a part of the through route over which the outbound shipment moved. *Held*, That the regular tariff was properly applied on the return movement; that the return movement under through billing must be treated as a unit; and that there could be no refund on the basis of the half rates for any portion of such return movement.¹⁵

§ 318. Movement of Shipments refused by Consignees or Damaged in Transit.

¶ A. IN GENERAL.

In one form or another many carriers provide for the return free or at reduced rates, or the reconsignment under through

¹⁴ Rule 40, Tariff Circular 16-A; Rule 217, Con. Rul. Bul. No. 4 (May 6, 1907).

¹⁵ Rule 42, Con. Rul. Bul. No. 4 (March 3, 1908).

rate from point of origin, of shipments that are damaged in transit or are refused by consignees. In answer to request for ruling the Commission expressed the opinion that in a nondiscriminatory way and within reasonable limits such rule is not unlawful or improper. The Commission stated, however, that care should be taken to preserve the distinction between shipments in which the carrier has no interest except the collection of the transportation charges and which are re-consigned or returned purely out of consideration for the interests of the owner of the shipment and shipments which, because of injury or damage in transit, are left on the carrier's hands and in which it has an interest to the extent of the transportation charges and the value of the shipment.¹⁶

¶ B. SHIPMENTS REFUSED BY CONSIGNEE.

A rule providing that shipments which are refused by consignee may be reconsigned and forwarded under application of through rate from point of origin to final destination, either with or without the exaction of a reconsignment charge, is permissible. Such rule should provide that if reconsigned to a point beyond which takes a lower rate from point of origin the rate to first destination will be charged, and should also require satisfactory showing of actual refusal by consignee and of a genuine transaction in good faith.¹⁷

¶ C. SHIPMENTS DAMAGED IN TRANSIT.

A rule providing for the reconsignment or return free or at reduced rate of articles damaged in transit is not deemed improper if it is so framed and applied as to prevent abuse or improper practices under it. As to shipments that are not in closed packages, and thus are open to immediate inspection, the rule should provide that in order to claim return under this rule the goods shall not have left the possession of the carrier before such claim is made. As to goods that are in closed packages it is believed that the rule should

¹⁶ Rule 74, Tariff Circular 17-A; Rule 41, Tariff Circular 16-A.

¹⁷ Ibid.

provide that they must be returned to the carrier within ten days.¹⁸

¶ D. RULES MUST BE PUBLISHED AND APPLIED ONLY VIA ROUTE
OVER WHICH SHIPMENT MOVED.

Such rules must be in tariffs and must be applied without discrimination and should provide that rule for return of shipments applies only via the route and line over which the shipment moved. The Commission stated that uniformity among carriers in rules and practices in such matters as these is desirable and contributes to thorough understandings and harmony between carriers and shippers.¹⁹

¶ E. DAMAGED IN TRANSIT SHIPMENTS LEFT ON HANDS OF
CARRIER MAY BE HAULED OVER ITS LINES AS ITS OWN
PROPERTY WOULD BE.

Where a shipment is refused and is left on the hands of the carrier it is believed that the carrier, when it recognizes its responsibility for the value of the shipment and the transportation charges on same, may haul it for itself to such point on its own lines as offers the best opportunities or facilities for disposing of it to advantage, just as it may haul property of its own.²⁰

**§ 319. Transportation of Trucks of Cars destroyed on
Foreign Lines.**

If a car of one company is destroyed on the line of another company, the carrier upon whose line the car is destroyed may transport free, as its own property, to junction with the line of the carrier owning the car, the trucks of the destroyed car, which are understood to be salvage from a wreck, the cost of which must be borne by the carrier on whose lines it occurs. If there is not direct connection between the line of the carrier owning the car and the line upon which it is destroyed, the carrier on whose line the car is destroyed may

¹⁸ Rule 74, Tariff Circular 17-A; Rule 41, Tariff Circular 16-A.

¹⁹ Ibid.

²⁰ Ibid.

transport the trucks free to a junction with an intermediate carrier, and pay to the intermediate carrier or carriers their full tariff rates for transporting them to a junction with the line of the carrier owner of the car destroyed, and such owner may transport them on its own lines as its own property.

The Commission stated that "it does not appear to it that opportunity for abuse or discrimination is opened by this practice. It does not appear to transgress the Commission's rule that carriers may not haul freight free for each other; and it is approved with the reservation that if discrimination or unlawful practice is found to grow out of it the plan will be condemned."²¹

§ 320. Coal used for Steam Purposes not entitled to Reduced Rates.

A tariff providing for reduced rates on coal used for steam purposes, or that the carrier will refund part of the regular tariff charges on presentation of evidence that the coal was so used, is improper and unlawful. That is to say that the carrier has no right to attempt to dictate the uses to which commodities transported by it shall be put in order to enjoy a transportation rate.²²

§ 321. Free Transportation of Supplies of Express Companies by Railroads.

A railway company may lawfully transport the supplies of an express company without reference to any tariff provision when used in the business of the express company upon the line of the railway itself.

A railway company may not lawfully transport supplies of an express company when used in the business of that company at points not on the line of the railway.²³

²¹ Rule 224, Con. Rul. Bul. No. 4 (May 12, 1908).

²² Rule 34, Con. Rul. Bul. No. 4 (Feb. 3, 1908).

²³ In the Matter of Contracts of Express Companies for the Free Transportation of their Men and Material over Railroads, 16 I. C. C. R. 246.

§ 322. Free Transportation of Railway Packages by Express Companies.

An express company may lawfully transport the packages of a railway company between points upon that line of railway without reference to its tariff rates.

An express company may not lawfully transport for a railway packages between points on its route but not on that particular line of railway.²⁴

§ 323. Free Transportation of Material for Erection of Refrigeration Plant not Owned by the Carrier.

A carrier, not being able to obtain ice for refrigeration purposes at a division point, entered into a contract under which a private company there undertook to build a plant and manufacture ice. The contract provided that in case it was necessary to enlarge the plant to meet the increasing needs of the carrier, the carrier would transport, free of charge, the material and mechanics necessary to make the enlargement. An enlargement was required and made, and upon application by the carrier for permission to refund the freight charges on the material used and the passenger fares paid by the mechanics employed on the work: *Held*, That the application must be denied, it appearing that the ice plant also sold ice commercially in the community in question.²⁵

§ 324. Contracts between Telephone, Telegraph and Cable Companies and other Common Carriers.

See *Section 678, post*.

§ 325. Issuing of "Franks" by Express Companies to Officers, Agents, Employés and their Families declared Illegal.

The issuing of franks by an express company to officers, agents, attorneys, or employés of itself or other express com-

²⁴ *Ibid*.

²⁵ Rule 124, Con. Rul. Bul. No. 4 (Dec. 7, 1908).

panies or railroad companies, or to the families of such persons, upon which property is transported from one State to another free of charge, relates to interstate commerce, which it is within the constitutional power of Congress to regulate, and is within the prohibitions of the Interstate Commerce Act and its amendments against discrimination, undue preference, and departure from the published schedule of rates, and is unlawful. Such gratuitous carriage is not within the exceptions made in the Interstate Commerce Act, which by their terms are restricted to certain classes of passengers carried by railroads and property carried for certain classes of shippers and for stated purposes.²⁶

It should not be overlooked that express companies are included within the provisions of Sections 2 and 3 of the Act to Regulate Commerce against unjust and unreasonable discrimination, of Section 6 of the Act prohibiting the taking of any greater or less sum for transportation of property than that named in the tariffs filed, and Section 1 of the Elkins Act making it unlawful to offer or accept any rebate from the published rate, or other discrimination in respect of the transportation of any property whereby any advantage is given.²⁷

The power of Congress over interstate transportation embraces all manner of carriage whether gratuitous or otherwise; and in the absence of express exceptions, the intention of Congress in enacting the Elkins Act was to prevent any departure whatever from published rates.²⁸

§ 326. Passes or Franks of Telegraph, Telephone and Cable Companies.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) permits the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees and their families of telegraph, telephone and cable

²⁶ *United States v. Wells-Fargo Express Co.* (1908), 161 Fed. Rep. 606, affirmed in *American Express Co. et al. v. United States* (1909), 212 U. S. 522; 53 L. ed. 635, 29 Sup. Ct. 315.

²⁷ *Ibid.*

²⁸ *Ibid.*

lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of the Act.

Section 1 as recently amended also provides that nothing contained in the Act shall be construed to prevent telephone, telegraph and cable companies from entering into contracts with common carriers, for the exchange of services.

CHAPTER XXII.

ALLOWANCES BY CARRIERS FOR SERVICES RENDERED OR INSTRUMENTALITIES FURNISHED BY OWNERS OF PROPERTY TRANSPORTED.

SECTION

- 327. Allowances to Owners for Services rendered or Instrumentalities
Furnished must be Just and Reasonable.
- 328. Allowances for the Delivery and Receipt of Property.
- 329. Jurisdiction of Commission over Allowances to the Owner of Prop-
erty Transported.
- 330. Allowance for Weight of Stakes, Racks, and Blocks on Flat and
Gondola Cars.
- 331. Allowance by Carriers of Mileage for Use of Private Cars.
- 332. Allowances to Terminal Railroads and Boat Lines Owned or Con-
trolled by the Shipper.
- 333. Allowances for Shrinkage in Weight of Shipments while in Transit.
- 334. Allowances for Grain Doors furnished by Shippers.
- 335. Allowance by Carriers for Elevation Service.
- 336. Allowances to Shippers must be shown in Published Tariffs.

§ 327. Allowances to Owners for Services rendered or Instru- mentalities Furnished must be Just and Reasonable.

The statute provides that if the owner of property transported directly or indirectly renders any service connected with such transportation, or furnished any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable.¹

The Commission has stated, that while it is true that under the terms of the amended Act to Regulate Commerce a shipper may receive in the rate charged, a "just and reasonable" allowance from a carrier for a service or instrumentality furnished by him in connection with the transportation of his own property, this provision must be read in connection

¹ Act to Regulate Commerce. Section 15.

with the other provisions of the law prohibiting and making unlawful any arrangement or practice that results in an undue preference or an undue discrimination in favor of one shipper as against others, or that results in a rebate or other departure from the lawfully published rates. Therefore, if the allowance involves a profit over and above the actual cost of the service rendered it becomes when made to a shipper, a rebate and an unlawful discrimination to the extent of the profit realized. It is not a rebate when it does not exceed the actual cost. But to avoid that fundamental objection the actual cost of the service rendered must be the limit of the allowance.²

§ 328. Allowances for the Delivery and Receipt of Property.

It is not a part of the carrier's duty to bear the expense of transfer of goods from the shipper to the carrier. The delivery of goods to a carrier and the receipt of goods from a carrier are duties devolving upon the shipper, for which the carrier cannot be compelled to pay. For carriers to undertake to make a shipper allowances based upon the performance by the shippers for themselves of services which they are legally bound to do for themselves is for the carrier to violate the Act to Regulate Commerce.³

§ 329. Jurisdiction of Commission over Allowances to the Owner of Property Transported.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) provides, that the Commission may, after hearing on a complaint, or on its initiative, determine what

² Federal Sugar Refining Co., etc., v. B. & O. Rd. Co. et al. (1909), 17 I. C. C. R. 40, following *In the Matter of Allowances, etc.*, 12 I. C. C. R. 85.

³ *In the Matter of Allowances for the Transfer of Sugar* (1908), 14 I. C. C. R. 619, following *Wight v. United States*, 167 U. S. 512, 42 L. ed. 258, 17 Sup. Ct. 822; *Chicago & Alton Ry. Co. v. United States*, 156 Fed. Rep. 558, 84 C. C. A. 324; *General Electric Co. v. N. Y. C. & H. R. R. Co.*, 14 I. C. C. R. 237; *Solvay Process Co. v. D. L. & W. R. R. Co.*, 14 I. C. C. R. 246.

is a reasonable charge as the maximum to be paid by the carrier or carriers to the owner of the property transported for the service rendered or the use of the instrumentality furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the other orders provided for in that section of the statute.

§ 330. Allowance for Weight of Stakes, Racks, and Blocks on Flat and Gondola Cars.

The Commission has recognized the reasonableness of an allowance of 500 pounds from the weight of cars for racks, stakes, and blocks furnished by the shipper on flat and gondola cars loaded with freight requiring their use.⁴

The defendant railroad company had a tariff in effect which made no allowance for the weight of stakes used to secure the lumber on the cars. Within a reasonable time after the shipment moved the defendant amended its tariff to make an allowance of 500 pounds for such purpose. Upon the facts stipulated the plaintiff was awarded due reparation. By this decision also the Commission recognized the reasonableness of such an allowance in weights.⁵

§ 331. Allowance by Carriers of Mileage for Use of Private Cars.

Inasmuch as it is the duty of the carrier to supply the rolling stock for the freight it offers or proposes to carry, if the diversities and peculiarities of the traffic are such that this is not always practical and the consignors are allowed to supply it themselves, it is just and proper that the owner of such equipment be given a reasonable allowance for the use thereof.⁶ Such allowance is usually in the form of mile-

⁴ National Wholesale Lumber Dealers Assn. et al. v. A. C. L. Rd. Co. et al., 14 I. C. C. R. 154; affirmed in Duluth Log Co. v. M. & I. Ry. Co., 15 I. C. C. R. 192; same, 15 I. C. C. R. 627.

⁵ Kaye & Carter Lumber Co. v. C. M. & St. P. Ry. Co., 14 I. C. C. R. 604.

⁶ Rice v. L. & N. R. R. et al. (1888), 1 I. C. C. R. 503; 1 I. C. R. 722; Scofield v. L. S. & M. S. Ry. Co. (1888), 2 I. C. C. R. 90; 2 I. C. R. 67.

age, i. e., a fixed allowance, in cents or fractions of a cent, per mile for each mile the car travels over the roads. This allowance is usually made for the empty movement in consideration of the loaded movement.

**§ 332. Allowances to Terminal Railroads and Boat Lines
Owned or Controlled by the Shipper.**

See *Chapter 13, post.*

**§ 333. Allowances for Shrinkage in Weight of Shipments
while in Transit.**

In considering a contention that an allowance should be made for the shrinkage of bananas while in transit, the Commission held, that it could not sustain the position of the complainant. It admitted that an allowance is made in the weight of shipments of live stock and some other freight, but questioned the logic of the practice; that the shrinkage of freight in transit is one of the elements that should be considered in the fixing of the rate; that at the most the shrinkage is a matter of estimation. In the case of bananas, shipments on the road four days shrink more than they do when on the road only two days; to be accurate the shrinkage would be different at different points of destination based upon the distance from the point of origin.⁷

§ 334. Allowances for Grain Doors furnished by Shippers.

The Commission has decided that the requirements of the law will be satisfied, for the present at least, if the carriers that propose to pay shippers for grain doors furnished by such shippers provide in their tariffs that where grain doors are necessary and are furnished by the shipper the carriers will pay the actual cost of such doors, with stated maximum allowances per grain door and per car. Such maximum allowances per door and per car must be reasonable, and where carriers pay for such doors on the basis of actual cost

⁷ *Topeka Banana Dealers Assn. et al. v. St. L. & S. F. R. Co. et al.*, 13 I. C. C. R. 620.

a certified statement from the shipper, verified as to the number of doors furnished and the cars for which they are furnished, by carrier's agent, should in every instance be required.⁸

Where a carrier has established a tariff provision in conformity with the Commission's rule with respect to the payment by carriers of the cost of grain doors, and it appears that prior to the publication of such a tariff it had been the practice of the carrier to pay for grain doors furnished by shippers: *Held*, That applications may be made on the special reparation docket for authority to refund on the basis of the tariff provision for grain doors furnished within six months prior to the effective date of the tariff rule.⁹

§ 335. Allowance by Carriers for Elevation Service.

See *Section 241, ante*.

§ 336. Allowances to Shippers must be shown in Published Tariffs.

See *Section 461, post*.

⁸ Rule 78, Con. Rul. Bul. No. 4 (June 1, 1908).

⁹ Rule 132, Con. Rul. Bul. No. 4 (Jan. 5, 1909).

CHAPTER XXIII.

ALLOWANCES TO TERMINAL RAILROADS AND BOAT LINES OWNED OR CONTROLLED BY THE SHIPPER.

SECTION

- 337. Right of Terminal Railroad to Participate in Joint Tariff and Enjoy Division of Through Rate.
- 338. Sole Ownership of Terminal Road creates no Presumption of Illegality of Transaction.
- 339. Allowances to "Tap Lines."
- 340. Division of Rate to Boat Line controlled by the Shipper.
- 341. Services performed and Instrumentalities furnished for which Owner is not Entitled to Compensation.
- 342. Allowances to Terminal Railroads as a Medium of Rebating.

§ 337. Right of Terminal Railroad to Participate in Joint Tariff and Enjoy Division of Through Rate.

The International Harvester Company owned the Illinois Northern Railroad. Whatever profit accrued to that railroad inured to the benefit of the Harvester Company, its sole owner. The Illinois Northern Railroad was a common carrier within the provisions of the first section of the Act to Regulate Commerce. It was incorporated as a railroad company under the laws of Illinois. It actually owned and operated a line of railroad. It maintained a freight station, at which it received and delivered for the general public considerable quantities of less than carload freight. Its main business was the moving of loaded cars to and from various industries along its line, and in that capacity it served more than two hundred plants besides that of the International Harvester Company. *Held*, That manifestly there was no reason in law why this railroad might not make joint rates, file joint tariffs, and agree upon joint division as other railroads do.¹

¹ In the matter of Divisions of Joint Rates and Other Allowances to Terminal Railroads (1904), 10 I. C. C. R. 385.

§ 338. Sole Ownership of Terminal Road creates no Presumption of Illegality of Transaction.

The mere fact that a terminal railroad is entirely owned by the largest individual shipper over it, or that it was originally organized and built for the purpose of doing the work of that shipper, is not controlling against the legality of the transaction. While there may be great objection to allowing shippers to build and operate railroads over which their traffic moves, the Interstate Commerce Act contains no prohibition of that kind.²

However, the ownership of a rail line by a shipper which serves that shipper and perhaps a number of others, calls for the closest scrutiny of all charges and practices to ascertain whether there is undue discrimination through divisions or allowances which are the equivalent of rebates to the shipping owner.^{2a}

§ 339. Allowances to "Tap Lines."

In the case of *The Central Yellow Pine Association v. V., S. & P. Rd. Co. et al.*,³ lumber mill operators owned and controlled short originating roads called "tap lines" which were used in transporting the timber and logs from the forests to the lumber mill. The interstate railroads handling the lumber shipments established through rates with these "tap lines" and allowed them divisions of the rates for the services performed by them. It appeared that the payment of these divisions in all cases was made to a so-called railway company and not to the mill company. In some instances the railway com-

² Re Division of Joint Rates (1904), 10 I. C. C. R. 385, following *Central Yellow Pine Association v. V. S. & P. R. Co.*, 10 I. C. C. R. 193. Cited *Crane Railroad Co. v. P. & R. Ry. Co. et al.* (1909), 15 I. C. C. R. 248.

^{2a} *Crane Railroad Co. v. P. & R. Ry. Co. et al.* (1909), 15 I. C. C. R. 248.

³ *Central Yellow Pine Association v. V. S. & P. Rd. Co. et al.* (1904), 10 I. C. C. R. 193, cited and applied in *Central Yellow Pine Assn. v. Ill. Cent. Rd. Co. et al.* (1905); 10 I. C. C. R. 505, and reaffirmed in *Star Grain & Lumber Co. et al. v. A. T. & S. F. Ry. Co. et al.* (1909), 17 I. C. C. R. 338.

pany was merely a department of the mill company; in other cases it appeared to be a separate firm composed of the same individuals; in still other cases it was a chartered corporation whose stock was owned by the mill company or the proprietors of that company; whatever money was received by it, however, inured to the benefit of the mill company finally if not directly.

The Commission held that "tap lines" were the private properties of the mill owners and that these allowances amounted to rebates and therefore unlawful under the Act. That it was immaterial whether the logs were brought to the mill by steam railroad, horse railroad, wagon, or other means of conveyance.

The Commission further stated that these divisions can only be granted when the logging road is a public carrier which actually makes a joint through rate. That to become a common carrier within the purview of the Act, the "tap line" must clearly file its tariffs and render its statistical reports to the Commission, and otherwise subject itself to governmental authority, and must obey the law obligatory on such carriers.

In the case of *Star Grain & Lumber Co. et al. v. A., T. & S. F. Ry. Co. et al.*,⁴ the Commission held that it could not recognize as common carriers, under the Act, lines that do not publish tariffs in lawful form or concur properly in lawful tariffs of other lines in which they are named as parties, or that do not file annual reports and keep their accounts in accordance with the system prescribed by the Commission, or that do not in all other respects comply with the law.

But the mere interposition between the lumber mill and the carrier of a paper railroad incorporation that calls itself a common carrier and complies with the Act in those respects, but is owned by the mill or its proprietors, does not give legality to the so-called tap-line allowances or meet the requirements of the Commission. As an administrative body the Commission cannot stop at the surface of a transportation

⁴ *Star Grain & Lumber Co. et al. v. A. T. & S. F. Ry. Co. et al.* (1909), 17 I. C. C. R. 338, affirmed in *Fathauer Co. v. St. L. I. M. & S. Ry. Co. et al.* (1910), 18 I. C. C. R. 517; see also *Industrial Lumber Co. v. St. L. W. & G. Ry. Co. et al.* (1910), 19 I. C. C. R. 50.

problem because its form and outward appearance are regular but must reach the actual situation and examine its real substance and thus be able to enforce the prohibitions as well as the requirements of the Act.⁵

The underlying principle of the law is to forbid preferences, discriminations and departures from the published rates; and any allowance or division made to or with a tap line, whether incorporated in form as a common carrier or not, that is owned and controlled, directly or indirectly, by a lumber mill or its officers or proprietors, and, beyond the logs that it hauls to the mill, has no traffic except such as it may pick up as a mere incident to its effort to serve the mill as an adjunct or plant facility, is a preference and discrimination and an unlawful departure from the published rate.⁶

§ 340. Division of Rate to Boat Line controlled by the Shipper.

In a proceeding before the Commission,⁷ it was shown that Manistee and Ludington were salt producing points in Michigan, and that salt shipped from those points to places on the Missouri River was carried by boat line on Lake Michigan, to Chicago, and by railroad from Chicago to the Missouri River. The through rate was 53 cents per barrel of which the boat line received, according to the destination, from 30 to 33 1-3 percent, amounting to from 16 to 18 cents per barrel. Established vessel lines on the lake formerly carried the salt to Chicago for from 8 to 11 cents per barrel, but additional services were rendered by the boat line, including storage at points of shipment and unloading, cooperage, docking, storage, insurance, handling and loading in cars at Chicago, representing a cost of about 8½ cents per barrel. The boat line and the salt were owned by distinct corporations, but the same

⁵ Star Grain & Lumber Co. et al. v. A. T. & S. F. Ry. Co. et al. (1909), 17 I. C. C. R. 338, affirmed in Fathauer Co. v. St. L. I. M. & S. Ry. Co. et al. (1910), 18 I. C. C. R. 517; see also Industrial Lumber Co. v. St. L. W. & G. Ry. Co. et al. (1910), 19 I. C. C. R. 50.

⁶ Star Grain &c. Co. v. A. T. & S. F. R. Co., 17 I. C. C. R. 338.

⁷ Re Transportation of Salt (1904), 10 I. C. C. R. 148.

persons owned controlling interests in both corporations. Salt interests at Detroit complained that this division to the boat line amounted to a rebate from the tariff to the salt shippers from Manistee and Ludington and enabled them to undersell Detroit salt in the Western markets. It further appeared that coal used in producing salt at Detroit cost on the average about 75 cents to each ton of salt, while Manistee and Ludington salt producers also operated lumber mills and used the refuse from lumber manufacture for fuel in the salt works. *Held*, That it was no part of the duty of the Commission to equalize differences in the natural advantages of localities through the adjustment of tariff rates, and that upon the facts shown in the investigation it did not appear that the share of the through rate allowed to the boat line was so grossly disproportionate to the value of the entire through service as to amount to a rebate in favor of the salt interests of Manistee and Ludington which also controlled the boat line.

§ 341. Services performed and Instrumentalities furnished for which Owner is not Entitled to Compensation.

In the case of *General Electric Co. v. N. Y. C. & H. R. R. Co. et al.*,⁸ the complainant appealed to the Commission to determine and fix the just and reasonable sum that it might charge the defendants for alleged services performed and instrumentalities furnished by it in connection with the transportation of its own property by the defendants to and from interstate points. The complaint was based upon the provision incorporated into Section 15 of the Act to Regulate Commerce by the amendatory act of June 29, 1906, as follows:

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or the use of the instrumentality so

⁸ *General Electric Co. v. N. Y. C. & H. R. R. Co. et al.* (1908), 14 I. C. C. R. 237. Ruling in this case followed in *Solvay Process Co. v. D. L. & W. Rd. Co. et al.* (1908), 14 I. C. C. R. 246.

furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

The instrumentalities referred to in the petition were the complainant's storage tracks which it had constructed and the locomotives and electric motors which it owned and operated, within the fence of its extensive plant at Schenectady, in the State of New York. And the services which the petitioners claimed to perform in connection with the interstate movement of its own property consisted in taking from the storage tracks the cars that had been set there by the defendants, and switching them, by means of its own engines and crews, to certain of its shops, foundries, and other buildings within the inclosure, where cars were customarily loaded with finished products for shipment to interstate destinations, or, as the case might be, to the same or other shops, foundries, and buildings where cars were ordinarily unloaded of raw materials and supplies consigned to the complainant from interstate points of origin. The complainant also hauled the loaded and empty cars from these shops, foundries and other buildings back to the storage tracks where the defendants might take and put them into service again if empty, or haul them on to their several interstate destinations if loaded.

These activities and this equipment the complainant asserted were services directly rendered and instrumentalities furnished by it in connection with the transportation of its own property within the meaning of the provision of the Act above referred to; and it insisted that it ought to have reasonable compensation therefor from the defendants. The defendants had long been in the habit, both at Schenectady and elsewhere, of setting cars at factories having their own switch connections, and hauling them away again free of charge. The complainant therefore urged that for each loaded car inbound and outbound it was entitled at the hands of the defendants to one movement and return, free of charge, between its storage tracks and any designated shop, factory, foundry, or other building within the inclosure of its plant, where loading or unloading was done and where the particular car might be needed. And as it performed the service for itself with its

own facilities and thus saved the defendants that expense it contended that it might properly make a charge therefor against them.

It was contended for the complainant that it was entitled to compensation because, as was alleged, (a) the maintenance of its storage tracks relieved the defendants of the necessity of increasing their terminal facilities at Schenectady, which were admitted to be insufficient to accommodate all the traffic, including the complainant's; (b) by switching the cars from the storage tracks to its various shops and factories with its own engines and crews and switching them back again, the complainant saved the defendants the expense of doing, car by car, what it did free of charge for other manufactories at Schenectady and elsewhere; (c) the defendants could and did deliver cars to complainant on its storage tracks in trains and take them away again in trains, instead of singly and at greater cost as they did free of charge for others at Schenectady and elsewhere; (d) the "spotting" of cars for others, by which was meant the placing of cars at the doors of factories or on the spot where they were needed, was a service that was taken into consideration by the defendants in making up their rates, and therefore, when not done by them for the complainant, which did it for itself, there ought to have been some abatement in the rate in the way of an allowance to the complainant.

The Commission after a full and careful consideration of all the facts, dismissed the complaint, and held that where a manufacturing plant has so increased in size as to require within the plant inclosure 12 miles of broad-gauge switching tracks and 7 miles of narrow-gauge electric tracks for the prompt, successful, and economical operation of the industry, and with its own motors, engines, and crews does a vast amount of purely internal switching, which would be seriously interfered with by the switching engines of the railroad if permitted access to the plant, and has on that account assumed charge also of the in-and-out switching and spotting theretofore done by the railroads, that it is not entitled to compensation from the railroad companies to cover the cost of the

movements of loaded and empty cars between the interchange tracks and certain shops, foundries, and other buildings within the inclosure.

That common carriers are under no duty to extend their transportation obligations with the extension of great industrial plants, and to accept and deliver cars within the inclosure over a network of interior switching tracks constructed as plant facilities to meet the requirements of the industry.

That the complainant in the above case did nothing within its plant inclosure which it could lawfully call upon the defendants to do for it, and therefore nothing for which it might lawfully demand compensation; that under the circumstances shown of record the obligation of the defendants to the complainant involved only an acceptance and delivery of the cars at some reasonably convenient point of interchange.

In another case, the complainant, the Crane Railroad Company, having 1.9 miles of track, connecting the Crane Iron Works and 5 other industries at Catasauqua, Pa., with the defendants' tracks, the Philadelphia & Reading Ry. Co., Central Railroad Company of New Jersey and Lehigh Valley Rd. Co., asked for the establishment of through routes and joint rates upon interstate shipments between points on its line and all points on defendant's lines. Held, upon all the facts and circumstances disclosed, that complainant was not entitled⁹ to the order sought in the proceeding, that the services performed by the Crane Railroad Company for the Crane Iron Works is that of a plant facility, the expense of which should be borne entirely by the Iron Works and which no railroad under the guise of the absorption of a switching charge may lawfully sustain.¹⁰

§ 342. Allowances to Terminal Railroads as a Medium of Rebating.

See *Section 394, post*.

⁹ Crane Railroad Company v. P. & P. Ry. Co. et al. (1909), 15 I. C. C. R. 248.

¹⁰ Crane Iron Works v. C. R. R. Co. of N. J. et al. (1910), 17 I. C. C. R. 514.

CHAPTER XXIV.

SWITCHES AND SWITCH CONNECTIONS.

SECTION

- 343. Duty of Carriers to construct, maintain and operate Switch Connections.
- 344. Power of Commission to Order Switch Connections.
- 345. Purpose of the Statute.
- 346. Application for Switch Connection.
- 347. Location of Switch Connection.
- 348. Carrier has no Right to question the use to be made of a Switch Connection.
- 349. Facts to be considered in establishing a Switch Connection within the Limits of a Municipality.
- 350. Private Sidetrack defined.
- 351. Spurs and Sidetracks connecting Industries with a Carrier's Rails, as constituting a Portion of Carrier's Terminal Facilities.

§ 343. Duty of Carriers to construct, maintain and operate Switch Connections.

The Act to Regulate Commerce as changed by the Hepburn amendment of June 29, 1906, provides that any common carrier subject to the provisions of said Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private sidetrack which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper.¹

¹ Act to Regulate Commerce. Section 1.

Under the provisions of the amended statute stated above, it has become the duty of an interstate carrier to make connection with a lateral, branch line of road, or private side track, either upon the application of that lateral line or of any shipper, upon three conditions:

(1) That such switch connection shall be reasonably practicable; (2) that it can be put in with safety, and (3) that it will furnish sufficient business to justify the construction and maintenance of such switch connection.

It should be noted that the statute does not order the construction of a *private sidetrack* by a railroad company, but simply orders the carrier to make "a switch connection" *with* a private sidetrack.²

§ 344. Power of Commission to Order Switch Connections.

¶ A. PROVISION OF THE STATUTE.

The Act (*as amended June 29, 1906, and June 18, 1910*) provides that if any common carrier shall fail to install and operate any such switch or connection, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the Commission as provided in Section 13 of the Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in Section 15 of the Act, directing the common carrier to comply with the provisions of the statute in accordance with such order, and such order shall be enforced as provided in the Act for the enforcement of all other orders by the Commission, other than orders for the payment of money.³

The amendment of June 18, 1910, conferred upon the Commission power and authority which it did not theretofore pos-

² Winters Metallic Paint Co. v. C. M. & St. P. Ry. Co. (1909), 16 I. C. C. R. 587.

³ See note 1, *supra*.

sess. The provision as it now stands is applicable when a common carrier fails to install and operate any switch or connection "on application therefor in writing by any shipper or owner of such lateral, branch line of railroad."

Under the Hepburn amendment of 1906 the power of the Commission could only be invoked "on application therefor in writing by the shipper."⁴

Prior to the Hepburn amendment referred to, the Commission relied upon the discrimination clause of the statute (Section 3) for its authority to correct abuses and preferences in the establishment of switch connections.⁵

The Commission has exercised its present authority in a number of instances.⁶

¶ B. COMMISSION DOES NOT POSSESS PLENARY DISCRETION AS TO ADVISABILITY OF THE CONNECTION.

It will be noticed that the law does not confer upon the Commission plenary discretion as to the advisability of such connection. The Act declares that the connection shall be made under certain specified circumstances and conditions. It is not contemplated by the law that appeal to the Commission shall be necessary; but it is provided that in case a carrier does not comply with the duty imposed complaint may be made by a shipper or owner of the lateral, branch line of railroad to the Commission, which shall have authority to make an order compelling the connection.⁷

¶ C. COMMISSION NO AUTHORITY TO ORDER THE CONSTRUCTION OF A PRIVATE SIDETRACK.

By Section 1 of the Amended Act to Regulate Commerce

⁴ Barden & Swarthout v. L. V. Rd. Co. (1907), 12 I. C. C. R. 194.

⁵ Red Rock Fuel Co. v. B. & O. Rd. Co. (1905), 11 I. C. C. R. 438.

⁶ Nield v. C. St. P. M. & O. Ry. Co. (1907), 12 I. C. C. R. 202; McRae Terminal Ry. v. Southern Ry. Co. et al. (1907), 12 I. C. C. R. 270; Weleetka Light & Water Co. v. Ft. S. & W. Rd. Co. (1907), 12 I. C. C. R. 503.

⁷ Rahway Valley R. R. Co. v. D. L. & W. R. R. Co. (1908), 14 I. C. C. R. 191.

the Commission is authorized to order the construction and maintenance, upon reasonable terms, of "a switch connection" with any lateral branch line of railroad, or "*private sidetrack which may be constructed* to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same." From the language of this section it is clear that the Commission has no authority to order the construction of a *private sidetrack* by a railroad company, but that its authority is limited to ordering a carrier to make "a switch connection" *with* a private sidetrack. Certainly the Commission's authority does not embrace the power to order a carrier to construct and maintain a sidetrack off its right of way and without direct contribution by the shipper to the expense incident thereto.⁸

§ 345. Purpose of the Statute.

The Commission has stated:¹¹ "The provision of the statute, as we construe it, is based upon what might be termed the 'open-gateway policy'; the thought of Congress was for the shipper—the manufacturer, the mine-owner, the lumberman—who wishes to market his product in the widest practicable field and have the most direct connection therewith. Such theory is in harmony with the long-standing provision in Section 3 of the Act requiring carriers to afford all reasonable, proper, and equal facilities for the interchange of traffic between their lines, and for the receiving, forwarding, and delivery of passengers and property to and from their several lines and those connecting therewith. And it is further in step with the spirit of that requirement of Section 1 that carriers shall furnish transportation upon reasonable request therefor and shall establish through routes and just and reasonable rates applicable thereto. These are all essentially shippers' provisions, and the amendment of 1906 respecting switching connections is but complementary."

⁸ See note 2, *supra*.

¹¹ See note 7, *supra*.

§ 346. Application for Switch Connection.

The statute provides that the shipper or owner of the lateral, branch line of railroad shall make application in writing to the carrier for switch connection.¹² Such application is specifically required before the shipper or lateral, branch line railroad can file complaint with the Commission. In order for the Commission to have jurisdiction of the question it is therefore necessary that such written application be made to the carrier.

§ 347. Location of Switch Connection.

The Commission, while retaining the right to control the location of switch tracks to private industries in accordance with the evidence, is disposed, in recognition of the risk that arises from such interruptions of through rails, to leave the location of such tracks largely to the discretion and wisdom of the carrier.¹⁴

§ 348. Carrier has no Right to question the use to be made of a Switch Connection.

A carrier cannot reserve to itself, or exercise, the right to determine as to what commodities shall or shall not be moved over a switch connection and dealt in by a dealer who is located upon a siding which is connected with the carrier's line by such switch, except in so far as is necessary and proper to afford protection to life and property against the handling or storage of dangerous commodities, such as explosives or highly inflammable liquids.¹⁵

§ 349. Facts to be considered in establishing a Switch Connection within the Limits of a Municipality.

Sidings and connections are frequently, if not generally, located within the corporate limits of cities or towns. It

¹² See note 1, *supra*.

¹⁴ *Weleetka Light & Water Co. v. Ft. S. & W. Rd. Co.* (1907), 12 I. C. C. R. 503.

¹⁵ See note 4, *supra*.

must, therefore, be remembered that in determining whether or not such connection will be ordered by the Commission in a case of which it has jurisdiction, the power and authority of those who are charged with the administration of the affairs of the municipality, including its health officers, as well as the rights of the owners of adjoining and neighboring property, must be respected and be given full consideration.¹⁶

§ 350. Private Sidetrack defined.

A private sidetrack is one that is outside the carrier's right of way, yard, and terminals, and of which the railroad does not own either the rails, ties, roadbed or right of way, and has no right of use superior to that of the shipper.¹⁷

§ 351. Spurs and Sidetracks connecting Industries with a Carrier's Rails, as constituting a Portion of Carrier's Terminal Facilities.

Where spurs and sidetracks connecting industries with a carrier's rails within switching limits were constructed and maintained by the carrier, the Commission has found such spurs and sidetracks to constitute a portion of the carrier's terminal facilities and has held the delivery of a car upon an industrial siding to be a substitute for delivery upon public team tracks, and, no additional service being involved, could not be made the basis for an additional charge.¹⁸

¹⁶ See note 4, *supra*.

¹⁷ Rules 79 and 121, Con. Rul. Bul. No. 4.

¹⁸ *Associated Jobbers of Los Angeles v. A. T. & S. F. Ry. Co. et al.* (1910), 18 I. C. C. R. 310.

CHAPTER XXV.

EMBARGOES.

SECTION

352. "Embargo" defined.

353. Lawfulness of Embargo.

354. Preference to Live Stock, Perishable Freight and Company's Material during Period of Embargo.

355. Duty of Shipper to keep himself informed as to Status of Embargo.

356. Method of forwarding Cars after Embargo is raised.

357. Discrimination in enforcing an Embargo.

§ 352. "Embargo" defined.

An embargo is an order issued by a carrier against a connecting carrier or carriers refusing to accept any or a particular class of traffic to certain or all deliveries, rendered necessary by conditions beyond the carrier's control; due to congestion of traffic on carrier's lines, act of God or other *vis major*.

§ 353. Lawfulness of Embargo.

Where carrier's rails are badly congested due to excessive movement of traffic, it is not unlawful for such carrier to issue embargo notices to its connecting lines refusing to receive certain classes of freight, so as to avoid the further congestion of freight in junction freight yards, provided such embargo is practically maintained and enforced.¹

§ 354. Preference to Live Stock, Perishable Freight and Company's Material during Period of Embargo.

Where an embargo is imposed upon certain kinds of freight rendered necessary by the congested condition of traffic on carrier's rails, it is not improper that live stock, perishable

¹ Daish & Sons v. C. D. & C. Ry. Co. et al. (1903), 9 I. C. C. R. 513.

freights, and material or supplies for the railroad should be excepted from such embargo.²

§ 355. Duty of Shipper to keep himself informed as to Status of Embargo.

In the absence of a custom or course of business on the part of a carrier to notify shippers of the ending of an embargo upon its line, it is the duty of the shipper to keep himself informed.³

§ 356. Method of forwarding Cars after Embargo is raised.

When an embargo is raised it is proper for the carrier in forwarding freight received from connecting lines, to forward cars as far as practicable in the order of their receipt, so that there should be no unreasonable discrimination or preference which might be avoided.⁴

§ 357. Discrimination in enforcing an Embargo.

See *Section 369, Paragraph D, post.*

² Daish & Sons v. C. D. & C. Ry. Co. (1903), 9 I. C. C. R. 513.

³ Riddle, Dean & Co. v. B. & O. Rd. Co. (1888), 1 I. C. C. R. 603;
1 I. C. R. 778.

⁴ See note 1, *supra*.

CHAPTER XXVI.

DISCRIMINATIONS, PREFERENCES AND ADVANTAGES.

SECTION

358. Unjust Discrimination defined and prohibited.
359. Undue or Unreasonable Preference or Advantage Forbidden.
360. Purpose of the Prohibitions against Unjust Discrimination and Undue or Unreasonable Preference or Advantage.
361. Technical Phrases used in the Statute defined and their Usage.
362. Not all Discriminations, Preferences or Advantages Unlawful.
363. Carriers Bound to Afford Equal Facilities of Transportation.
364. Discrimination in Rates for Transportation of Freight.
365. Classification of Telegraph, Telephone and Cable Messages Permissible.
366. Discrimination in Terminal Facilities and Charges between Commodities.
367. Carriers demanding Prepayment of Charges for Transportation.
368. Retention of Overcharge as Unjust Discrimination.
369. Discrimination in Distribution of Cars.
370. Discrimination in hauling Private Cars.
371. Unjust Discrimination in diverting Traffic contrary to Shipper's Instructions.
372. Discrimination in Classification.
373. Special Privileges which can only be enjoyed by Certain Shippers.
374. Discrimination in granting Transit Privileges.
375. Discrimination between Localities.
376. Discrimination between Connecting Carriers in furnishing Facilities for Interchange of Traffic.
377. Refusal of Express Company to extend "C. O. D." Service to Shipments of Liquor.
378. Preference in Expedition of Military Traffic in Time of War.
379. Discrimination in Fares for Transportation of Passengers.
380. Ticket Brokerage as a means of Unjust Discrimination and Undue Preference.
381. Discrimination between White and Colored Passengers. "Jim Crow" Cars.
382. Through Passenger Arrangement which affects Rights of Passenger beyond Terminus of Line.
383. Right of Passenger to ride on Freight Trains if Extended must be Offered Impartially.
384. Jurisdiction of Interstate Commerce Commission over Unjust Discriminations and Undue Preferences.

REGULATION—33.

385. Reparation for Damages account Unjust Discrimination.

386. Granting of Rebate or Concession as an Unjust Discrimination.

387. Penalty of Carrier for Unjust Discrimination and Undue or Unreasonable Preference or Advantage.

388. Penalty of Party receiving Favors from Carrier.

§ 358. Unjust Discrimination defined and prohibited.

The Act to Regulate Commerce provides: "That if any common carrier subject to the provisions of this Act, shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared unlawful."¹

The Elkins Act provides: "That it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to the Act to Regulate Commerce and the acts amendatory thereof why any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to Regulate Commerce and the acts amendatory thereof, or why any other advantage is given or discrimination practiced."²

§ 359. Undue or Unreasonable Preference or Advantage Forbidden.

The Act to Regulate Commerce provides: "That it shall

¹ Act to Regulate Commerce. Section 2.

² Elkins Act. Section 1.

be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”³

§ 360. Purpose of the Prohibitions against Unjust Discrimination and Undue or Unreasonable Preference or Advantage.

The railroad is justly regarded as a public facility which every person may enjoy at pleasure, a common right to which all are admitted and from which none can be excluded. The essence of this right is equality, and its enjoyment can be complete only when it is secured on like conditions by all who desire its benefits. The railroad exists by virtue of authority proceeding from the State, and thus differs in its essential nature from every form of private enterprise. The carrier is invested with extraordinary powers which are delegated by the sovereign, and thereby performs a governmental function. The favoritism, partiality, and exactions which the law was designed to prevent resulted in large measure from a general misapprehension of the nature of transportation and its vital relation to commercial and industrial progress. So far from being a private possession, it differs from every species of property and is in no sense a commodity. Its office is peculiar, for it is essentially public. The railroad, therefore, can rightfully do nothing which the State itself might not do if it performed this public service through its own agents instead of delegating it to corporations which it has created. The large shipper is entitled to no advantage over his smaller rival in respect of rates or accommodations, for the compensation exacted in every case should be measured by the same standard. To allow any exceptions to this fundamental rule is to sub-

³ Act to Regulate Commerce. Section 3.

vert the principle upon which free institutions depend and substitute arbitrary caprice for equality of right.⁴

The leading purposes of the Act to Regulate Commerce, therefore, were to restrain carriers in the service performed by them from giving preferences, through favoritism or otherwise, whereby those least able to protect themselves, whether persons or localities or interests, would be placed at disadvantage unjustly;⁵ to promote and facilitate commerce by the adoption of regulations to make charges for transportation just and reasonable, and to prohibit undue and unreasonable preferences or discriminations;⁶ to enforce equality between shippers over the same line, and to prohibit any rebate or other device by which two shippers, shipping over the same line, the same distance, under the same circumstances of carriage, are compelled to pay different prices therefor;⁷ to destroy favoritism.⁸ Such are the conclusions drawn from the history and language of the Act and from the decisions of the American and English courts.

Even in the absence of legislative enactment or special contract a common carrier is bound to treat all shippers alike and can be compelled to perform this common-law duty by mandamus or other proper writ.⁹

No one can be compelled to engage in the business of a common carrier, but if he does so, he becomes subject to the duties imposed upon common carriers.¹⁰

The fullest power of correction is vested in the Congress,

⁴ Sixth Annual Report of I. C. C. (1892).

⁵ Second Annual Report of I. C. C. (1888).

⁶ T. & P. Ry. Co. v. I. C. C. (1896), 162 U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 940.

⁷ I. C. C. v. Alabama Midland Ry. Co. (1897), 168 U. S. 144, 18 Sup. Ct. Rep. 45; 42 L. ed. 414; Wight v. United States (1897), 167 U. S. 512; 17 Sup. Ct. Rep. 322; 42 L. ed. 258.

⁸ N. Y. N. H. & H. Rd. Co. v. I. C. C. (1906), 200 U. S. 361; 20 Sup. Ct. Rep. 272, 50 L. ed. 515, affirming I. C. C. v. C. & O. Ry. Co., 128 Fed. Rep. 59.

⁹ Mo. Pac. Ry. Co. v. Larabee Flour Mills Co. (1909), 211 U. S. 612, 53 L. ed. 352, 29 Sup. Ct. 214, affirming 74 Kan. 808, 88 Pac. 72.

¹⁰ Ibid.

and the exercise of that power is demanded by the highest considerations of public welfare.

§ 361. Technical Phrases used in the Statute defined and their Usage.

¶ A. "LIKE KIND OF TRAFFIC."

The term "a like kind of traffic," as used in Section 2 of the Act, does not mean traffic that is identical, but traffic that is of "a like kind" with other freight in the elements of a fair and just classification for the purpose of arriving at a just and reasonable rate.¹¹

¶ B. "UNDER SUBSTANTIALLY SIMILAR CIRCUMSTANCES AND CONDITIONS."

The phrase "under substantially similar circumstances and conditions," as used in Section 2 of the Act, refers to the matter of carriage, and does not include competition between rival routes.¹² Neither does it include matters affecting individual shippers.¹³ For instance, a railroad company is not authorized to charge one shipper of coal a lower rate than is charged another shipper between the same terminals, because the former is under contracts extending over a term of years, based on lower rates which were in force when such contracts were made, while the other shipper has no such contracts.¹⁴

Inasmuch as the similarity of circumstances and conditions under which a service of carriage is rendered, under the Interstate Commerce Act, requiring equality of rates, relate to the circumstances and conditions which affect the service only, where different coal-mining localities are grouped into a dis-

¹¹ New York Board of Trade v. Pennsylvania Rd. Co. et al. (1891), 4 I. C. C. R. 447, 3 I. C. R. 417.

¹² I. C. C. v. Alabama Midland Ry. Co. (1897), 168 U. S. 144; 18 Sup. Ct. Rep. 45; 42 L. ed. 414; Wight v. United States (1897), 167 U. S. 512; 17 Sup. Ct. Rep. 822; 42 L. ed. 258, cited in Capital City Gas Co. v. Central V. Ry. Co. et al. (1905), 11 I. C. C. R. 104.

¹³ Pennsylvania Rd. Co. v. International Coal Mining Co. (1909), 173 Fed. Rep. 1, 97 C. C. A. 383.

¹⁴ Ibid.

trict for rate-making purposes, a carrier is not justified in making a different rate for the same or substantially similar service from a particular locality in such district, or on the product of a particular mine or vein, from that charged others because the difference in the product from such locality, mine or vein and that from other mines in the district is such that it can pay a higher rate and still compete in the market.¹⁵

¶ C. "DISCRIMINATION."

The use of the word "discrimination" in Section 1 of the Elkins Act, as amended by the Hepburn Act of June 29, 1906, without the qualifying words "unjust," etc., used in the original Act of February 4, 1887, was not intended to broaden the provisions of the earlier act in that respect; the word "discrimination" itself, as so applied, implying an unjust or unfair distinction.¹⁶

The provisions of the Interstate Commerce Act prohibiting unjust discriminations and undue and unreasonable preferences, have reference to the service rendered, and not to the person of the sender or consignee.¹⁷

¶ D. "LIKE SERVICES."

In order for services to be "like" within the meaning of the statute they must be rendered at least over the same line. There can be no violation of the statute unless the services are "like."¹⁸ A carrier cannot be said to discriminate within the meaning of the statute except as between those whom it serves or whom it may lawfully be required to serve. It is not guilty of discrimination merely because it does not afford as favorable rates as others serving a different territory, though the products carried by each are brought to the same market. The law does not deal in these matters with all carriers collectively as a single unit or system, but its commands are

¹⁵ P. & R. Ry. Co. v. I. C. C. (1909), 174 Fed. Rep. 637.

¹⁶ U. S. v. Wells-Fargo Express Co. (1908), 161 Fed. Rep. 606.

¹⁷ Ibid.

¹⁸ Cattle Raisers' Association v. Ft. W. & D. C. R. Co. (1898), 7 I. C. C. R. 513.

directed to each, with respect to the services which it is required to perform.¹⁹

Each case must be decided upon its own merits, and the decision in another case against other carriers operating in a different territory under essentially dissimilar circumstances and conditions affords no proper criterion therefor.²⁰ For example: A carrier transported for one party two barrels of sugar between two points on its line, and two days later transported for another party one barrel of sugar over the same route and between the same points. *Held*, That the services were *like* and *contemporaneous* within the meaning of Section 2 of the Act.²¹

A railroad company absorbed the terminal charge on live stock in one market while a charge for such service was exacted in another city reached by a different line. *Held*, That this did not constitute an unjust discrimination under the Act, since the services were not rendered over the same line and were therefore not "like" within the meaning of the statute.²²

§ 362. Not all Discriminations, Preferences or Advantages Unlawful.

¶ A. STATUTE DOES NOT PROHIBIT ALL PREFERENCES AND ADVANTAGES.

It is not all discriminations that fall within the inhibition of the statute, but only such as are unjust or unreasonable.²³ A carrier may give to one locality or one commodity a preference over some other locality or some other commodity, provided that preference be not undue or unreasonable.²⁴

¹⁹ Chicago Lumber & Coal Co. v. T. W. Ga. S. E. Ry. Co. et al., 16 I. C. C. R. 323.

²⁰ Ibid.

²¹ United States v. Tozer (1889), 39 Fed. Rep. 369.

²² See note 18, supra.

²³ I. C. C. v. B. & O. Rd. Co. (1890), 43 Fed. Rep. 37, affirmed 145 U. S. 263, 12 Sup. Ct. Rep. 844; 36 L. ed. 699.

²⁴ Cattle Raisers' Assn. v. Ft. W. & D. C. R. Co. (1898), 7 I. C. C. R. 513; I. C. C. v. B. & O. R. Co., 43 Fed. Rep. 37, affirmed 145 U. S. 263; 36 L. ed. 699, 12 Sup. Ct. 844; C. N. O. & T. P. R. Co. v. I. C. C., 162

It was not the purpose of the Act to prohibit just discrimination in the transportation of persons or property.²⁵

The possibility that a discrimination may be just is recognized by Section 2 of the Act, in declaring what shall be deemed unjust.²⁶

When traffic is not of a *like kind*, or when the *service is not like and contemporaneous*, or when the transportation is not *rendered under substantially similar circumstances and conditions*, difference in charge does not constitute unjust discrimination within the meaning of the statute.²⁷

The language of the Act recognizes that a uniform rate between different shippers is not always possible or proper; that the time of service, the kind of traffic, and the circumstances and conditions under which it is transported, may materially change the just obligations and duties of the carrier to its patrons.²⁸

A carrier subject to the Act is only bound to give the same terms to all persons alike under the same conditions and circumstances. Any fact which produces an inequality of conditions and a change of circumstances justifies an inequality of charge.²⁹

In fixing rates for differing but analogous services, the carrier has the right to exercise an honest discretion. Trifling differences of cost or character of the services rendered do not justify disparity of charges; but where the differences are substantial either in the work to be performed or in the utility

U. S. 184; 40 L. ed. 935; 16 Sup. Ct. 700; *T. & P. Ry. Co. v. I. C. C.*, 162 U. S. 197; 40 L. ed. 940, 16 Sup. Ct. 666; *I. C. C. v. C. N. O. & T. P. R. Co.*, 167 U. S. 479; 42 L. ed. 243, 17 Sup. Ct. 896; *I. C. C. v. Ala. Midland R. Co.*, 168 U. S. 144, 42 L. ed. 414, 18 Sup. Ct. 45.

²⁵ *United States v. C. & M. V. Ry. Co.* (1904), 127 Fed. Rep. 785, 62 C. C. A. 465.

²⁶ *I. C. C. v. B. & O. Rd. Co.* (1891), 145 U. S. 263; 12 Sup. Ct. Rep. 844, 36 L. ed. 699, affirming 43 Fed. Rep. 37, refusing to enforce order of Commission, *P. C. & St. L. Ry. Co. v. B. & O. Rd. Co.*, 3 I. C. C. R. 465, 2 I. C. R. 729.

²⁷ *I. C. C. v. B. & O. Rd. Co.* (1890), 43 Fed. Rep. 37.

²⁸ *U. S. v. Hanley* (1896), 71 Fed. Rep. 672.

²⁹ *I. C. C. v. C. G. W. Ry. Co. et al.* (1905), 141 Fed. Rep. 1003.

and value to the person served, a fair relation of rates meets the carrier's obligation.³⁰

The Interstate Commerce Act does not, therefore, prohibit the giving of *all* preferences and advantages or the production of all prejudices or disadvantages, but only those that are undue and unreasonable.³¹ An interstate carrier is free to exercise all his rights under the common law to the full extent to which such exercise has not been made unlawful by the Act.³²

¶ B. FACTS TO BE CONSIDERED IN DETERMINING WHETHER AN UNJUST DISCRIMINATION OR UNDUE PREFERENCE OR DISADVANTAGE EXISTS.

In passing upon questions arising under the Act, the tribunal appointed to enforce its provisions, whether the Commission or the courts, is empowered to fully consider all the circumstances and conditions that reasonably apply to the situation, and that, in the exercise of its jurisdiction the tribunal may and should consider the legitimate interests as well of the carrying companies as of the trades and shippers, and in considering whether any particular locality is subjected to an undue preference or disadvantage the welfare of the communities occupying the localities where the goods are delivered is to be considered as well as that of the communities which are in the locality of the place of shipment.³³

In determining whether any rate or set of rates is unjust or unreasonable, and whether any person, locality, or kind of traffic is thereby subjected to undue or unreasonable prejudice or disadvantage, it seems entirely appropriate to take into consideration all the facts and circumstances which bear upon the relation of rates to different communities. When Congress enacted that one locality should not have undue preference in rates or facilities over another locality, or be

³⁰ Carr v. Nor. Pac. Ry. Co. (1901), 9 I. C. C. R. 1.

³¹ Gamble-Robinson Commission Co. v. C. & N. W. Ry. Co. (1909), 168 Fed. Rep. 161.

³² Ibid.

³³ T. & P. Ry. Co. v. I. C. C., 162 U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 940 (1896).

subjected to any unreasonable prejudice or disadvantage, it opened the door for and made material any evidence which tends to throw light upon the question of undue preference or prejudice. These terms imply comparison of relative locations, of natural and acquired advantages, of the reasonableness of charges *per se* and in their relation to other rates on the various lines which serve the competing localities.³⁴

In order to constitute unjust discrimination within the meaning of the statute, the carrier must charge or receive directly from one person a greater or less compensation than from another, or must accomplish the same thing indirectly by means of a special rate, rebate or other device; but in either case it must be a *like and contemporaneous service* in the transportation of a *like kind of traffic, under substantially similar circumstances and conditions*.³⁵

§ 363. Carriers Bound to Afford Equal Facilities of Transportation.

Common carriers are bound by every principle of justice and of law to accord equal rights to all shippers who are entitled to like treatment, both in the receiving of supplies and the shipments of their products, and a carrier who under any pretext whatsoever grants to one shipper an advantage which it denies another violates the spirit and thwarts the purpose of the law.³⁶

§ 364. Discrimination in Rates for Transportation of Freight.

¶ A. CARRIERS GRANTING EACH OTHER PREFERENTIAL RATES LOWER THAN ARE CHARGED FOR SAME SERVICE TO THE SHIPPING PUBLIC.

The Commission has held that under the law a carrier or a

³⁴ Daniels v. C. R. I. & P. Ry. Co. et al. (1895), 6 I. C. R. 458, citing Eau Claire Board of Trade v. C. M. & St. P. Ry. Co., 4 I. C. R. 65; 5 I. C. C. R. 264; Raymond v. C. M. & St. P. Ry. Co., 1 I. C. R. 627; 1 I. C. C. R. 230; Board of Trade Union v. C. M. & St. P. Ry. Co., 1 I. C. R. 608; 1 I. C. C. R. 215.

³⁵ I. C. C. v. B. & O. Rd. Co. (1892), 145 U. S. 263; 12 Sup. Ct. Rep. 844; 36 L. ed. 699.

³⁶ Castle v. B. & O. Rd. Co., 8 I. C. C. R. 333.

person or corporation operating a railroad or other transportation line may not, as a shipper over the lines of another carrier, be given any preference in the application of tariff rates on interstate shipments, but it may lawfully and properly take advantage of legal tariff joint rates applying to a convenient junction or other point on its own line, provided such shipments are consigned through to such point from point of origin and are, in good faith, sent to such billed destination. In other words, one carrier shipping its fuel, material, or other supplies over the lines of another carrier must pay the legal tariff rates applicable to the same commodities shipped by an individual, but when a carrier is the consignee of a shipment of its own property which moves under a joint rate and is to participate in the haul of same via its own line, routing instructions of consignor to a specified junction point on the line of consignee carrier must be observed. There may be some instances, such as the movement of needed fuel, in which, in order to keep the trains or boats moving, such traffic could temporarily be given preference in movement without creating unjust or unwarranted discrimination.

Where stock in one carrier company is owned by another carrier company, but both maintain separate organizations and report separately to the Commission, they may not lawfully carry property free for each other.³⁷

An interstate carrier desiring stone for ballast on its right of way, leased a trackage right over a short connecting line leading to a quarry, and proposed to purchase the stone at the quarry and haul it to its own line with its own crews and equipment: *Held*, That the Commission must decline to sanction the arrangement for the reason that the carrier under the circumstances is a shipper and the proposed arrangement is a mere device to evade the payment of the lawful rates and would result in unlawful discrimination.³⁸

In *Hitchman Coal & Coke Co. v. B. & O. Rd. Co.*,³⁹ Clark,

³⁷ Rule 225, Con. Rul. Bul. No. 4 (Nov. 13, 1908).

³⁸ Rule 153, Con. Rul. Bul. No. 4 (April 5, 1909).

³⁹ *Hitchman Coal & Coke Co. v. B. & O. Rd. Co.*, 16 I. C. C. R. 512.

Commissioner, said: "The custom has been somewhat general in years gone by for carriers to accord to each other preferential rates lower than were charged for the same service to the shipping public. There is, however, no warrant in the common law for the theory that a carrier as a shipper over the lines of another carrier may enjoy or be given a preferred status. There is no intimation in the Act to Regulate Commerce that a carrier as a shipper has or may be given a status that is different from or more advantageous than that given to all other shippers. It has been suggested in justification of preferential rates on railway fuel coal that that product affords a large tonnage for the carrier that transports the coal; that it is in a sense a reciprocal arrangement; and that the shipper carrier thereby secures its fuel at a lower cost. Neither of these suggestions is persuasive. The practice cannot be upheld without removing the very cornerstone of the Act, which seeks to abolish and prevent unjust and undue discriminations and preferences. If a carrier may have lower transportation rates than other shippers just because it tenders a large tonnage, why may not the mine, mill, or factory that offers a large tonnage have lower rates than the mine, mill, or factory that offers a smaller tonnage? How can a carrier give such preferential rates to another carrier without unjustly discriminating in favor of some and against others of the mines or localities that it serves? Does it not necessarily follow that as a result of such rates one mine that has a contract for such fuel supply must secure an undue advantage over another mine in the same locality that has no such contract?

"The reciprocity idea promises returns that are extremely remote and of decidedly uncertain value. It is the same idea that was advanced in support of the practice of exchanging transportation of persons for newspaper advertising and upon which the United States Circuit Court said: 'It is essential to the spirit of the statute that the value of transportation be fixed and certain. In no other way can it be held to be exactly the same to all. If one person may purchase it with advertising, another with labor, and another with produce,

the value of which is a matter of agreement between the parties, how can it be said the schedule rate is always maintained? Would not the rate rest in the whim of the carrier? Such is not the intent of the law. To say to one man, "You must pay cash," and to his competitor, "You may pay in service or merchandise at prices we may agree on," be it more or less than the market prices, would seem clearly to constitute such a difference in transportation as is condemned by the Act.⁴⁰

"There is no valid reason why the earnings of one carrier should be sacrificed or reduced in order that another carrier may secure its fuel at less cost to it. There is apparently no room for any conclusion other than that heretofore officially expressed by the Commission, that a carrier as a shipper over the lines of another carrier cannot lawfully be given any preference in the application of tariff rates on interstate shipments; in other words, that one carrier shipping its fuel, material, or other supplies over the lines of another carrier must pay the legal tariff rates applicable to the same commodities shipped between the same points by an individual. The Commission adheres to the view that that is the law."

¶ B. LOWER RATE FOR TRAINLOADS THAN FOR CARLOADS.

A lower rate for a trainload or "cargo" lots than for a single carload of freight is unlawful as violating the rule of equity and tending to defeat its just and wholesome purpose.⁴¹

The fact that the quantity of goods tendered by one shipper is much larger than that tendered by another shipper cannot be urged in justification of lower freight rates in favor of the former shipper.⁴² If a low rate is granted on conditions

⁴⁰ United States v. C. I. & L. Ry. Co. 163 Fed. Rep. 114.

⁴¹ Paine Bros. & Co. v. L. V. Rd. Co. et al. (1897), 7 I. C. C. R. 218; Planters' Compress Co. v. C. C. C. & St. L. Ry. Co. et al. (1905), 11 I. C. C. R. 382; Carr v. Nor. Pac. Ry. Co. (1901), 9 I. C. C. R. 1.

⁴² Kinsley v. B. N. Y. & P. Rd. Co. (1888), 37 Fed. Rep. 181; United States v. Tozer (1889), 39 Fed. Rep. 309; Harvard Co. v. Pa. Co. et al. (1890), 4 I. C. C. R. 212; 3 I. C. R. 257; Glade Coal Co. v. B. & O. Rd. Co. (1904), 10 I. C. C. R. 226; Providence Coal Co. v. Providence & W. Rd. Co. (1887), 1 I. C. C. R. 107; 1 I. C. R. 363.

with which only a few can comply, that rate is presumably unfair and may be extremely prejudicial to all other shippers of like traffic, because they are practically unable to meet the terms upon which it is offered.⁴³

¶ C. HIGHER RATE FOR PERISHABLE FREIGHT THAN ORDINARY FREIGHT.

For a special service by a carrier, such as the transportation of perishable freight, requiring quick movement, prompt delivery at destination, special fitting of cars, their withdrawal from other service and their return empty on fast time, all involving greater expense to the carrier, a higher rate than for the carriage of ordinary freight is warranted by the conditions of the service and is reasonable and just. But the higher rate for a special service should bear a just relation to the service of the traffic, and is not wholly in the discretion of the carrier. While a carrier should be fully compensated, the public interests require that the traffic should not be rendered valueless to the producer, if the charges of the carrier have such an effect and can be reasonably reduced.

The requirements of the statute that all rates shall be reasonable and just involves a consideration of the commercial value of the traffic, and implies that rates should be so adjusted that producers of traffic as well as carriers may carry on their pursuits successfully, if practicable for both and without injustice to the carrier. The public good requires what is plainly the spirit of the law, that the transportation interests are not alone to be considered, but that in the just exercise of regulation, care should be taken that the lawful and necessary occupations of citizens are not unjustly burdened.⁴⁴

⁴³ Carr v. Nor. Pac. Ry. Co., 9 I. C. C. R. 1.

⁴⁴ Delaware State Grange, etc., v. N. Y. P. & N. R. Co. et al. (1891), 4 I. C. C. R. 588, 3 I. C. R. 554.

¶ D. CHARGING FOR WEIGHT OF BARREL WITHOUT MAKING A
CORRESPONDING CHARGE WHEN OIL IS SHIPPED IN TANK
CARS NOT UNJUST DISCRIMINATION.

Carriers cannot be charged with discrimination against shippers of oil in barrels between interstate points, because they charge for the barrel package without making a corresponding charge upon shipments in tank cars owned by those shippers who can afford to build and furnish them, the carriers having none of their own, where the transportation by tank cars is more remunerative to the carriers than the transportation by barrels, and the barrel shippers have made no demand for tank cars, and cannot use them economically for such shipments on account of the lack of facilities for unloading, etc.⁴⁵

¶ E. ALLOWANCE FOR LOSS BY LEAKAGE AND EVAPORATION TO
SHIPPERS OF OIL IN TANK CARS.

Defendants allowed shippers of oil in tank cars a reduction of 42 gallons from the shell capacity of the tank for alleged waste from leakage and evaporation in transportation. The Commission held that such losses were not less proportionally when the shipment is made in barrels, and no circumstance was discovered or reason advanced which justified a concession of that nature to the shipper who furnishes his own conveyance, when no corresponding allowance is made to a rival shipper using the means of transportation provided by the carrier.⁴⁶

¶ F. DIFFERENCE BETWEEN RATES ON FLOUR IN SACKS AND IN
BARRELS.

The Commission has held that a just relation of rates between flour in sacks and flour in barrels would be for the charge per barrel to be double the rate per 100 pounds in sacks, in as much as a barrel contains about 200 pounds of

⁴⁵ Penn. Refining Co. Ltd. v. W. N. Y. & P. Rd. Co. et al. (1908), 208 U. S. 208; 52 L. ed. 456, 28 Sup. Ct. 268, affirming 137 Fed. Rep. 343.

⁴⁶ Rice v. Cincinnati & C. R. Co., 5 I. C. C. R. 193; Rice, R. & W. v. W. N. Y. & P. Rd. Co. (1890), 4 I. C. C. R. 131; 3 I. C. R. 162.

flour and is generally accepted and treated as of that weight by carriers and shippers for transportation purposes.⁴⁷

¶ G. LOWER RATE ON IMMIGRANT MOVABLES THAN ON HOUSEHOLD GOODS GENERALLY.

The defendant published a special rate on immigrant movables between two interstate points of \$60 per car, while the regular on household goods was \$122 per car between the same points. The purpose of the special tariff was to afford cheap rates to immigrants, in order to develop sparsely settled sections of country: *Held*, That there was no dissimilarity of circumstances and conditions in the service performed as justified the difference in rates; that such difference constituted unjust discrimination.⁴⁸

¶ H. HIGHER RATE ON COAL WHEN LOADED FROM WAGONS THAN WHEN LOADED BY TIPPLE.

Making certain charges for the transportation of coal shipped in carloads when the coal is loaded by tipple, and exacting a higher charge when it is loaded in some other way, *and for that reason*, is not justified by difference in cost to the carrier between different methods of loading, and renders the higher rates thus made unreasonable and unduly discriminatory.⁴⁹

¶ I. CHARGING MORE FOR A SHORTER THAN FOR A LONGER DISTANCE OVER THE SAME LINE IN THE SAME DIRECTION, THE SHORTER BEING INCLUDED WITHIN THE LONGER DISTANCE.

See "*Long and Short Haul Clause and Relief from Operation thereof*," Chapter 8, *ante*.

¶ J. HIGHER DOMESTIC RATES THAN INLAND DIVISION OF IMPORT OR EXPORT RATES.

Carriers are not prohibited from making rates from points in the United States to points in foreign countries, or from

⁴⁷ Connor v. M. & O. Rd. Co. (1906), 11 I. C. C. R. 537.

⁴⁸ Elvey v. Ill. Cent. Rd. Co. (1890), 3 I. C. C. R. 652; 2 I. C. R. 804.

⁴⁹ Glade Coal Co. v. B. & O. Rd. Co. (1904), 10 I. C. C. R. 226.

points in foreign countries to points in the United States, of which the inland division is less than the tariff rate for the transportation of similar commodities when intended for local domestic consumption.⁵⁰

The United States Supreme Court in the case of *Texas & Pacific Ry. Co. v. Interstate Commerce Commission*,⁵¹ in upholding the legality of the inland proportions of through rates on import traffic which were lower than corresponding rates on domestic from ports of entry to the same inland points, stated that the following facts should be considered: That the acceptance of import traffic enabled the carriers to take advantage of the preponderance of empty car movement from ports of entry, thus securing traffic for which any rates might be regarded as remunerative; that the through rates were affected by competition, both of ocean and inland carriers; that the through bills of lading furnished collateral for the transaction of business, and took from the shipper and consignee the care as to intermediate charges and cost of handling, thus helping to swell the volume of business; that the tendency of the through billing was to eliminate the obstacles between producer and consumer; that the interest of the carrier and the consuming community as well as the producing community must be taken into account; and that there was no hard and fast rule which prohibited the carrier, in furtherance of its own interests and the interests of its patrons from making such difference in the charge on import and domestic traffic.⁵²

In the case of *Pittsburg Plate Glass Co. v. P., C. C. & St. L. Ry. Co. et al.*,⁵³ before the Commission, unjust discrimination

⁵⁰ *Kemble v. B. & A. Rd. Co. et al.* (1899), 8 I. C. C. R. 110, citing *T. & P. Ry. Co. v. I. C. C.*, 162 U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 940.

⁵¹ *Texas & Pacific Ry. Co. v. Interstate Commerce Commission* (1896), 162 U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 940, reversing *I. C. C. v. T. & P. Ry. Co.*, 57 Fed. Rep. 948, 6 C. C. A. 653; 52 Fed. Rep. 187; *New York Board of Trade, etc., v. Pennsylvania Co. et al.* (1891), 3 I. C. R. 417; 4 I. C. C. R. 447.

⁵² *Ibid.*

⁵³ *Pittsburg Plate Glass Co. v. P. C. C. & St. L. Ry. Co. et al.* (1908), 13 I. C. C. R. 87.

in the rates against domestic shipments of plate glass in favor of import shipments was alleged, on the ground that the rates on the former were relatively higher than the inland rail proportion of the total charge from the point of origin in a foreign country. The Commission following the law as interpreted by the Supreme Court in *Texas & Pacific Ry. Co. v. Interstate Commerce Commission*, *supra*, stated that it could not consider such disparity in rates alone as constituting unjust discrimination.

That in considering the question of alleged unjust discrimination in favor of shippers of import plate glass moving from the ports of entry in this and adjacent foreign countries to interior American destinations, and against domestic shipments between points in the United States, it is the duty of the Commission to look to the circumstances and conditions affecting the matters involved, not only in this country, but in the entire field of commerce, here and abroad. That it is well settled by the highest judicial authority that the existence and effectiveness of competition between carriers, whether by rail or water, whether subject to the Federal Act of regulation or not, and competition of markets, or the absence of such competition, are, among other things, pertinent to the question of similarity of circumstances and conditions, and as to whether the discrimination complained of and shown is or is not undue or unreasonable.

That to make the total through charge from a foreign point of origin the absolute measure of the rate to be charged on domestic traffic from the port of entry in this country through which the import shipment moves would be to establish a hard and fast rule difficult if not impossible for the rail carriers in this country to conform to in the establishment and publication of their rates, in view of that uncertain and flexible element involved in the ascertainment of the total through charges, to wit, the rates to the port.

That discriminations of the nature referred to in Sections 3 and 4 of the Act, in so far as they result from the bona fide action of a carrier in meeting circumstances and conditions

not of its own creation, and which are reasonably necessary for that purpose, do not of necessity fall under the condemnation of the law.

That transportation from a seaport of the United States or an adjacent foreign country to an interior American destination, in completion of a through movement of freight from a point in a foreign but not adjacent country, whether upon a joint through rate or upon separately established or proportional inland rate applicable only to imports moving through, is not a "like service" to the transportation of traffic starting at such domestic port, though bound for the same destination.

That as held in numerous decisions of the Supreme Court, it is neither required by law nor just, that the rates of a carrier on traffic subject to intense competition shall mark the limit or measure of its rates on traffic not subject to such competition. That being bound to consider the more intense competition to which the transportation of the foreign product is subject as one of the "circumstances and conditions" affecting the relative adjustment of rates, the Commission cannot, solely upon a basis afforded by a comparison of the inland proportion of the through rate from the foreign point of origin with the rate applying on domestic shipments of plate glass in this country, condemn the latter as unreasonable or unjustly discriminatory.

The above relation of rates does not render nugatory the protection to American manufacturers and producers intended by the tariff duties.

The Supreme Court in *Texas & Pacific Ry. Co. v. Interstate Commerce Commission*, *supra*, said:

One reading of the Act does not disclose any purpose or intention, on the part of Congress, to thereby reinforce the provisions of the tariff law. These laws differ wholly in their objects from the law to regulate commerce. Their main purpose is to collect revenues with which to meet the expenditures of the Government, and those of their provinces, whereby Congress seeks to so adjust rates as to protect American manufacturers and producers from competition by foreign low-priced labor, operate equally in all parts of the country.

¶ K. ASSESSMENT OF HIGHER RATE ON TRAFFIC ORIGINATING ON LINES OF CONNECTING CARRIERS THAN WHEN ORIGINATING ON OWN LINE.

On shipments of flour and other grain products defendant had in force certain rates for transportation between points on its own line and an arbitrary of 5 cents per 100 pounds to be applied in addition to its regular transportation charges to shipments received from connecting lines. *Held*, That the 5-cent arbitrary was unjust and unreasonable.⁵⁴

¶ L. DIVISION OF THROUGH RATE LOWER THAN LOCAL RATES BETWEEN SAME POINTS.

It is not unlawful for a carrier to accept as its proportion of a through rate a less sum than it charges for a like service which is local to its own line;⁵⁵ neither will the fact that a disparity between through and local rates is considerable, of itself, be regarded as conclusive evidence of undue discrimination.⁵⁶

The divisions of a through rate between the carriers in a line of transportation furnish no fair or just criterion by which to measure the intermediate local rates on the same line of transportation.^{56a} Neither can local rates be made the measure of what a carrier shall accept as its division of a through rate.⁵⁷

The local rate collected by the defendant on shipments of

⁵⁴ Blackwell Milling & Elevator Co. v. M. K. & T. Ry. Co. (1907), 12 I. C. C. R. 24, cited and applied in Ponca Milling Co. v. M. K. & T. Ry. Co. (1907), 12 I. C. C. R. 26; see also Bigbee & Warrior Rivers Packet Co. v. M. & O. Rd. Co. (1893), 60 Fed. Rep. 545; Hilton Lumber Co. v. N. & W. Rd. Co. et al. (1901), 9 I. C. C. R. 17.

⁵⁵ Parsons v. C. & N. W. Ry. Co. (1897), 167 U. S. 447; 17 Sup. Ct. Rep. 887; 42 L. ed. 231; Rice R. & W. v. W. N. Y. & P. Rd. Co. (1888), 2 I. C. C. R. 389; 2 I. C. R. 298.

⁵⁶ T. & P. Ry. Co. v. I. C. C. (1896), 162 U. S. 197; 16 Sup. Ct. Rep. 666; 40 L. ed. 940; Omaha Cooperage Co. v. N. C. & St. L. Ry. Co. et al. (1907), 12 I. C. C. R. 250.

^{56a} McMonan et al. v. G. T. Ry. Co. et al. (1889), 3 I. C. C. R. 252; 2 I. C. R. 604.

⁵⁷ Lippman & Co. v. Ill. Cent. Rd. Co. (1889), 2 I. C. C. R. 584; 2 I. C. R. 414.

sugar from Hannibal, Mo., to Heller, Kan., was higher than the proportion of the through rate from Chicago via Hannibal to Heller collected by the defendant for the haul between Hannibal and Heller. *Held*, That the circumstances and conditions attending the service in each case were substantially dissimilar, and that the charging of the higher local rate was not an unjust discrimination as against the shipper at Hannibal.⁵⁸

¶ M. GROUP RATES.

A group rate for a particular district upon a commodity for which a large demand exists, and intended to place the producers in the district upon an equality among themselves and with producers of the same commodity from other districts, all competing in a common market, is not unlawful merely on account of differences in the geographical location of different producers and their respective distances from the market.⁵⁹

Actual undue prejudice or damage of which the rate is the cause must result to the more favorably situated producers to render a group rate unlawful.⁶⁰

¶ N. DISCRIMINATION BETWEEN COMPETITIVE ARTICLES IN THE SAME MARKET.

The provisions of the third section of the Act to Regulate Commerce prohibiting carriers from making or giving any undue or unreasonable preference or advantage to any particular person, firm, company, corporation or locality, or any particular description of traffic, in any respect whatsoever, not only applies to relative rates on one description of traffic shipped to or from competing localities, but also to relative rates on differently described articles which are competitive in the same markets; and when carriers have established rates on articles

⁵⁸ *United States v. Tozer* (1889), 39 Fed. Rep. 369. See similar cases, *Detroit Board of Trade v. G. T. Ry. Co. et al.* (1888), 2 I. C. C. R. 315, 2 I. C. R. 199; *Chamber of Commerce, etc., v. F. & P. M. Rd. Co. et al.* (1889), 2 I. C. C. R. 553; 2 I. C. R. 393; *Poughkeepsie Iron Co. v. N. Y. C. & H. R. Rd. Co. et al.* (1890), 4 I. C. C. R. 195; 3 I. C. R. 248.

⁵⁹ *Imperial Coal Co. et al. v. P. & L. E. Rd. Co. et al.* (1889), 2 I. C. C. R. 618, 2 I. C. R. 436.

⁶⁰ *Ibid.*

of competitive traffic which are relatively reasonable and fair, they cannot arbitrarily select particular articles of such traffic and materially raise or lower rates so established thereon without violating that provision of the statute.⁶¹

The relating of rates ought to rest upon fixed and stable conditions. The fluctuations of markets are so frequent, especially as to competitive articles, and oftentimes unexpected, that commercial considerations alone would not furnish a sufficiently stable and fixed rule for guidance in making a rate that should remain substantially permanent through all fluctuations. The Commission does not, by a fixing of rates, attempt to overcome advantages which one producer or dealer may have in his geographical location, and to produce equality between competitors in all markets. It would be a useless task, even if it had the power, to attempt to accomplish such a result. The proper relation of rates for transportation of strictly competitive articles over the same line should be determined by reference to respective costs of service ascertained with reasonable accuracy.⁶² For example: Live hogs, live cattle and the dressed products of each are competitive commodities and are therefore entitled to relatively reasonable rates for transportation proportioned to each other according to the respective costs of service.⁶³

¶ O. HIGHER RATES FOR EXPORT THAN DOMESTIC TRAFFIC.

It is unreasonable to exact more for an export shipment than for the movement of the same quantity for domestic use.⁶⁴

¶ P. RATES ON CONSOLIDATED CARLOADS OF LESS-THAN-CARLOAD SHIPMENTS.

When Owner of Goods is Shipper.

In the case of *The Buckeye Buggy Co. v. C. O. C. & St. L. Ry.*

⁶¹ *Squire & Co. v. M. C. Rd. Co. et al.* (1891), 3 I. C. R. 515.

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Newark Machine Co. v. P. C. C. & St. L. Ry. Co. et al.* (1909), 16 I. C. C. R. 291.

Co. et al.,⁶⁵ the Commission held, that before allowing a carload rating to a carload shipment a carrier is entitled to require that the goods shall be loaded at one time and place, that but a single bill of lading shall be issued, and that the shipment shall be from one consignor to one consignee, but that when the goods are so loaded and by the terms of sale become the property of the consignee upon delivery to the carrier, the carrier has no right to inquire whether the consignee obtained his title from one or several owners; and that if it accords the carload rate in case the consignor is the owner, failure on its part to extend the same privilege when the consignee is the owner, violates Sections 1, 2 and 3 of the Act to Regulate Commerce.

The Commission ordered that the rule in defendant's classification covering the application of carload rates to carload lots should be so modified as to accord the same rating to consignor and consignee when the condition of ownership after the property is delivered to the carrier is the same.

When Shipper is a Forwarding Agent having no Interest in the Goods Transported.

In *Lundquist et al. v. Grand Trunk Western Ry. Co. et al.*,⁶⁶ the Circuit Court for Northern District of Illinois held that a railroad company is not required by the Interstate Commerce Act to give the same carload rates on interstate shipments to forwarding agents who solicit property for shipment from different owners, each having less than a carload, and combine it into carload lots, that it makes a carload shipment by a single owner; the charges in such case not being for "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," so as to render the difference in the rates made an unlawful discrimination under Section 2 of the Act. In

⁶⁵ *The Buckeye Buggy Co. v. C. C. C. & St. L. Ry. Co. et al.* (1903), 9 I. C. C. R. 620; applied and followed in *Bell Company v. B. & O. S. W. Rd. Co. et al.* (1903), 9 I. C. C. R. 632.

⁶⁶ *Lundquist et al. v. Grand Trunk Western Ry. Co. et al.* (1901), 121 Fed. Rep. 915.

the case of *California Commercial Association v. Wells, Fargo & Co.*,⁶⁷ before the Commission, a number of packages of merchandise, aggregating 16,000 pounds in weight, were assembled in New York by the complainant's agent and offered to defendant at one time and one place, consigned under one bill of lading to the complainant, a voluntary association of San Francisco merchants. Defendant's tariff provided a rate of \$8 per 100 pounds for shipments of 10,000 pounds and less than 20,000 pounds. Applying its rule as to "bulked shipments intended to be distributed by the consignee," defendant charged its parcel rate against each separate package. The Commission held, that the rule against "bulked shipments" is illegal; that the law does not justify the classification of shippers with regard to their interest in the property shipped; that ownership of property tendered for shipment cannot be made a test as to the applicability of a carrier's rates; that in gathering several packages of goods together and shipping them under the carrier's rates on large shipments, a shipper is not by device evading the law, but is legally availing himself of the rates which the carrier offers; that the cost of carrying a "bulked shipment" is not greater than the cost of carrying the same amount of freight at the instance of an individual owner; that the charge must therefore be the same in each case.

So in the case of *Export Shipping Company v. Wabash Rd. Co. et al.*,⁶⁸ the complainant delivered to defendants in Chicago for transportation to New York three carloads of freight consisting of a number of packages of various ownership, assembled by complainant before delivery to the carrier, and each consigned under a single bill of lading to a single consignee. On arrival in New York the delivering carrier refused to apply the carload rate, but in accordance with the note to Rule 5-B and Rule 15-E of the Official Classification, assessed the less-than-carload rates.

⁶⁷ *California Commercial Association v. Wells, Fargo & Co.* (1908), 14 I. C. C. R. 422; see also *California Commercial Assn. v. Wells, Fargo & Co.* (1909), 16 I. C. C. R. 458.

⁶⁸ *Export Shipping Company v. Wabash Rd. Co. et al.* (1908), 14 I. C. C. R. 437.

The Commission held that note to Rule 5-B and Rule 15-E are unlawful, basing its opinion on *California Commercial Association v. Wells, Fargo & Co.*, *supra*.

Chairman Knapp and Commissioner Harlan dissented to the majority opinion in both of the last named cases,⁶⁹ holding in the main that Official Classification, Rule 5-B note, providing that carload rates shall apply to cars loaded with different packages intended for different consignees only when the consignor or consignee is the actual owner of the property, and Rule 15-E, declaring that shipments of property combined into packages by forwarding agents claiming to act as consignor will only be accepted when the names of individual consignors and consignees, as well as the character and contents of each package are declared to the forwarding railroad agent, when the property will be waybilled as separate shipments and freight charged accordingly, are reasonable and valid, and are not violative of the Interstate Commerce Act prohibiting discrimination, and requiring equal charges to all for the same or like and contemporaneous service; there being a substantial dissimilarity of circumstances and conditions relating to the matter of carriage of carload freight assembled by forwarding agents and the transportation of carload freight, though made up of shipments to various consignees, where the consignor or consignee is the owner of the property.

In the *Export Shipping Co.*⁷⁰ case, the D. L. & W. Rd. Co. filed a bill in equity in the Circuit Court, S. D. New York,⁷¹ asking for an injunction suspending the operation of the order of the Commission. The Court granted a preliminary injunction stating, that a majority of the Court is in accord with the reasoning and conclusions expressed in the dissenting opinion of the Chairman of the Commission.⁷²

The American Forwarding Co., Trans-Continental Freight

⁶⁹ Read Chairman Knapp's able dissenting opinion in *Export Shipping Co. v. Wabash R. R. Co.*, 14 I. C. C. R. p. 440.

⁷⁰ See note 68, *supra*.

⁷¹ *Delaware, L. & W. R. Co. et al. v. I. C. C. et al.* (1908), 166 Fed. Rep. 499.

⁷² See note 69, *supra*.

Co. and Rockford Manufacturers' & Shippers' Association were granted leave of Court to intervene as parties defendant, at the request of the Commission.⁷³

§ 365. Classification of Telegraph, Telephone and Cable Messages Permissible.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) provides that messages by telegraph, telephone or cable, subject to its provisions, may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and that different rates may be charged for the different classes of messages.

§ 366. Discrimination in Terminal Facilities and Charges between Commodities.

¶ A. DIFFERENCE IN TERMINAL FACILITIES ON DIFFERENT COMMODITIES.

Transportation between defendant's terminal in Brooklyn and its rail terminus in Jersey City was effected by water carriage across New York Harbor. The action of defendant in discontinuing "track delivery" for hay in carloads at its station in Brooklyn, though it continued to make such delivery for other carload traffic, was taken to relieve a state of chronic congestion at that station, resulting largely from consignments of hay thereto. It continued delivering carload hay alongside wharves in Brooklyn as it did at other points within the light-erage district of New York. *Held*, That the resulting discrimination against hay in carloads was not "unjust" within the meaning of the Act to Regulate Commerce.

A common carrier of interstate commerce, is not in every case under legal compulsion to furnish the same terminal facilities for all description of traffic; it is sufficient if reasonable provision is made in this regard, and what is reasonable

⁷³ D. L. & W. R. Co. v. I. C. C. (1909), 169 Fed. Rep. 894.

in a given instance depends largely upon the conditions and surroundings of the particular locality.⁷⁴

¶ B. ABSORPTION OF TERMINAL CHARGE ON "DEAD" FREIGHT
AND ASSESSMENT OF SAME ON LIVE STOCK.

The imposition at a certain locality of a terminal charge upon live stock, while no similar charge is imposed upon "dead" freight, is not a discrimination under the statute against live stock and in favor of dead freight.⁷⁵

**§ 367. Carriers demanding Prepayment of Charges for
Transportation.**

¶ A. RIGHT OF CARRIER TO REQUIRE PREPAYMENT FROM ONE
CONSIGNEE AND TO GIVE CREDIT TO ANOTHER.

An interstate carrier does not subject a consignee to an undue or unreasonable prejudice or disadvantage under Section 3 of the Interstate Commerce Act by exacting, after due notice to it, the prepayment of charges for transportation of all property consigned to it, while it does not require such charges to be paid in advance upon freight consigned to others similarly situated.⁷⁶

A common carrier has the right under the common law to demand the prepayment of charges for freight of one, and to give credit for them to another similarly situated.

¶ B. WHERE CARRIER IN ORDER TO INJURE AND HARASS THE
CONSIGNEE DEMANDS PREPAYMENT OF CHARGES.

The fact that a carrier for the purpose of injuring the business of a consignee, or harassing it, subjects it to a prejudice or disadvantage which is neither undue or unreasonable, does not change the nature of the prejudice or disadvantage or create any cause of action therefor.⁷⁷

⁷⁴ Palmer Dock Hay & Produce Board of Trade v. P. R. R. Co., 9 I. C. C. R. 61.

⁷⁵ See note 18, *supra*.

⁷⁶ See note 31, *supra*.

⁷⁷ *Ibid*.

The plaintiff is a corporation engaged in buying, selling and dealing for commissions in fruit, vegetables, and dairy products at Minneapolis, and it has offices at St. Paul, Rochester, and Mankato, in Minnesota, and Aberdeen in South Dakota. The defendant is a common carrier. It has railroad stations at those towns, and lines of railroad through those states and adjoining states. It is the custom and usage of such carriers, and of the defendant, for the terminal carrier to advance the charge of connecting lines upon freight consigned to parties at those stations, to transport the freight and deliver it to the consignees, also to receive freight at its stations and to transport and deliver it to the consignees, to hold the bills until the questions regarding the correctness of the charges on its lines and on the connecting lines have been adjusted, and then to collect the bills of the consignee. From a bad motive the defendant, after notice, refused to advance charges to connecting lines, to receive and transport freight consigned to the plaintiff, unless the charges upon it for transportation were prepaid, while it continued to give credit to other consignees similarly situated according to the usage and custom.⁷⁸

Held, These acts did not subject the plaintiff to undue or unreasonable prejudice or disadvantage within the meaning of the Interstate Commerce Act.⁷⁹

§ 368. Retention of Overcharge as Unjust Discrimination.

The retention of an overcharge has all the effect of extortion and unjust discrimination against the person from whom its payment has been required, and when the refund of an excessive charge has been unnecessarily delayed for a considerable period the officials responsible therefor become fairly chargeable with wilful intention to violate the law.⁸⁰

⁷⁸ See note 31, *supra*.

⁷⁹ *Ibid*.

⁸⁰ *Jerome Hill Cotton Co. v. M. K. & T. Ry. Co.* (1896), 6 I. C. C. R. 601; *Phelps & Co. v. T. & P. Ry. Co.* (1893), 6 I. C. C. R. 36, 4 I. C. C. R. 363.

§ 369. Discrimination in Distribution of Cars.

¶ A. DUTY OF CARRIER TO TREAT SHIPPERS ALIKE IN DISTRIBUTION OF CARS.

It is not the business of the shipper to furnish the vehicle of transportation. That is the duty of the carrier. Under its franchise the carrier must do more than construct his roadway. He must equip it with the means of transportation, and these means, of whatever style or pattern, must be open impartially to all shippers of like traffic. If the carrier hire or arrange in any manner for the use of vehicles he does not own, he has one or two things to do: He must furnish like vehicles to all competitors in the traffic, or must be careful to make no unjust discrimination and give no undue preference in his rates.⁸¹

Every shipper is legally entitled to fair treatment in the use of these public utilities, and any discrimination which in substantial degree deprives shippers of such use must be considered unjust, unless forced by justifying conditions.⁸²

The Interstate Commerce Act was intended, among other things, to secure an equal and fair distribution of car facilities to all shippers similarly situated. The amendment to Section 1 of the Act of June 29, 1906, is as follows:

It shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon a reasonable request therefor.

By reference to the body of this section it will be seen that the word "*such*" refers to the previous sentence of the Act, which, among other things, provides that:

The term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof, and all services in connection with the receipt, delivery, elevation and transfer in transit, storage and handling of property transported.

It was evidently the intention of Congress, in the employ-

⁸¹ Rice R. & W. v. W. N. Y. & P. R. Co. (1890), 2 I. C. R. 298; 4 I. C. C. R. 131; 3 I. C. R. 162.

⁸² Richmond Elevator Co. v. P. M. Rd. Co., 10 I. C. C. R. 629; see Glade Coal Co. v. B. & O. Rd. Co. (1904), 10 I. C. C. R. 226.

ment of the term "transportation," to include all kinds of instrumentalities of shipment and carriage, and the one explicit requirement of the entire section is that there shall be just and reasonable charges in connection with the "transportation of persons or property as aforesaid," and that cars shall be furnished "irrespective of ownership or of any contract, express or implied, for the use thereof."

Section 3 of the Act provides that:

It shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 1, as amended, and Section 3, confer certain rights upon shippers, and it is clearly provided, among other things, that there shall be no discrimination against or in favor of those similarly situated by the common carrier in furnishing means of transportation. Section 1 makes it the duty of the railroad to provide and furnish such transportation upon a reasonable request therefor, and Section 3 is intended to secure to the shipper the same treatment with reference to facilities for transportation. Section 3 provides that all shippers shall have a just equality of facilities, and Section 1 provides that all shippers shall be given a just and equal sufficiency of facilities. This is a wise provision, and was intended to prevent common carriers from either directly or indirectly giving certain shippers an undue preference in the distribution of car service. In the absence of such legislation providing the means by which summary relief could be afforded the shipper, it would be an easy matter for the common carrier, by favoritism, to build up one class of shippers and at the same time utterly destroy the business of another class similarly situated, and it was to prevent this kind of discrimination that this Act and the Acts amendatory and supplemental thereto were passed.⁸³

⁸³ United States v. B. & O. R. R. Co. et al. (1908), 165 Fed. Rep. 113, 91 C. C. A. 147.

¶ B. COAL CARS MUST BE DISTRIBUTED WITHOUT FAVORITISM.

It is the duty of a railroad company, in effecting coal-car distribution among mines located on and shipping coal over its line, not to discriminate or show any undue favoritism.⁸⁴

When the equipment of a carrier usually applied to the transportation of a particular article (here, gondola cars for the transportation of coal) is not equal to the demand made upon it, it is its duty to appropriate other cars to such service or to obtain cars elsewhere. A carrier is not justified in refusing to furnish any cars for the transportation of coal to a certain point on its line, by the fact that it could at the time make more money by using its regular coal cars on another portion of its line, where return loads were obtainable and more frequent trips could be made, thus enabling it to serve a larger number of customers with a smaller number of cars.⁸⁵

¶ C. SHIPPER MAY NOT COMPLAIN OF REASONABLE RULE OF CAR DISTRIBUTION.

If a system of coal-car distribution applied by a railroad company in a given field is, under the circumstances and conditions peculiar to that field, a reasonable one, and fair to all, and is applied to all alike, no shipper has just cause for complaint.⁸⁶

¶ D. DISCRIMINATION IN ENFORCING AN EMBARGO.

Whatever may be said of an embargo against one commodity only in time of congestion, nothing can be said for an embargo which refuses transportation facilities to some establishments while according such facilities to their competitors. If the exercise of such a power were to be tolerated, carriers

⁸⁴ United States, ex rel. Kingwood Coal Co., v. W. V. N. R. Co. et al. (1903), 125 Fed. Rep. 252, affirmed in 134 Fed. Rep. 198; 67 C. C. A. 220; United States v. N. & W. Ry. Co. (1906), 143 Fed. Rep. 266, 74 C. C. A. 404, reversing 138 Fed. Rep. 849.

⁸⁵ Riddle, Dean & Co. v. N. Y. L. E. & W. Rd. Co. et al., 1 I. C. R. 787; 1 I. C. C. R. 594.

⁸⁶ United States v. N. & W. Ry. Co. (1901), 109 Fed. Rep. 831.



would be able to issue sentence of commercial death against some of their patrons, while continuing to serve others.⁸⁷

§ 370. Discrimination in hauling Private Cars.

The regulating statute is opposed to every species of favoritism, and seeks to secure like treatment for all persons in like relations to the carrier. The defendant may decline to haul private cars at all, no matter by whom owned or for what purpose used, and a uniform rule to that effect would be entirely consistent with its public obligations. A railroad may also haul private cars of a certain class, and refuse at the same time to haul others of a wholly or substantially different class. In either case, however, there should be no avoidable partiality. It is not a question of convenience, much less is it a question for arbitrary decision. A well-defined and reasonable policy should be adopted, and that policy should be observed to the fullest practicable extent.⁸⁸

§ 371. Unjust Discrimination in diverting Traffic contrary to Shipper's Instructions.

The action of a carrier in diverting through traffic from a shorter route over which it participates in carriage, so as to secure for itself greater aggregate revenue through a long haul by a different route over which it is also engaged in transportation, sometimes results in discriminations and prejudices, both as to rates and facilities, and inequality in treatment of shippers and localities having no other justification than this end, is indefensible.^{88a}

§ 372. Discrimination in Classification.

The legal duty of common carriers to so classify traffic and fix charges thereon that the burden of transportation shall be reasonably and justly distributed among the articles they

⁸⁷ Rogers & Co. v. P. & R. Ry. Co., 12 I. C. C. R. 309.

⁸⁸ Carr v. Nor. Pac. Ry. Co. (1901), 9 I. C. C. R. 1; Chappelle v. L. & N. Rd. Co. et al. (1910), 19 I. C. C. R. 56.

^{88a} Colorado Fuel & Iron Co. v. Southern Pacific Co., 6 I. C. R. 488.

carry arises under the obligation imposed upon them not to charge unreasonable or unjust rates or to inflict any unjust discrimination or undue prejudice in any respect whatsoever; and even in cases where the need of additional revenue is apparent the carrier cannot arbitrarily select some one or more articles upon which to apply higher rates regardless of the relation which such article or articles bear to other commodities commonly offered for transportation.⁸⁹

The carrier can perpetrate unjust discrimination against a shipper in violation of the statute by differences in classification as well as in any other way.⁹⁰

When classification is used as a device to effect unjust discrimination or as a means of violating other provisions of the Act to Regulate Commerce, the statute requires the Commission to so revise and correct such classification and arrangement as to correct the abuse.⁹¹

If the elements which fix the class are substantially the same in case of two articles, then those articles should, as a matter of law, be classified alike, and to put one in one class and another in another class would be a discrimination and a violation of the Act to Regulate Commerce, no matter what the purpose of doing it might be.⁹² To show that some one article of freight in a class is charged a much higher or lower relative rate than it ought to be charged when compared with another in that or some other class, may, under all the circumstances, establish the result that a mistake has been made in its classification that amounts to an unjust discrimination.⁹³

⁸⁹ Nat'l Hay Assn. v. L. S. & M. S. Ry. Co., 9 I. C. C. R. 264.

⁹⁰ N. Y. Board of Trade v. Pa. Rd. Co. (1891), 4 I. C. C. R. 447; 3 I. C. R. 417; Bates v. Pa. R. R. Co. et al. (1890), 3 I. C. C. R. 435, 2 I. C. R. 715.

⁹¹ Coxie Bros. Co. v. L. V. R. Co. (1891), 4 I. C. C. R. 535; 2 I. C. R. 195, 229; 3 I. C. R. 460, affirmed in Schumacher Milling Co. v. C. R. I. & P. (1893), 6 I. C. C. R. 61; 4 I. C. R. 373.

⁹² Rea v. M. & O. R. R. Co. (1897), 7 I. C. C. R. 43.

⁹³ Pyle & Sons v. E. T. V. & G. R. Co. (1888), 1 I. C. R. 767; 1 I. C. C. R. 473.

§ 373. Special Privileges Which can only be enjoyed by Certain Shippers.

A railroad company by granting a privilege which, although ostensibly open to the whole public, can, in the nature of things, only be taken advantage of by certain shippers, creates thereby a discrimination which may or may not be undue, according to the circumstances in each case.⁹⁴

Any regulation or practice that withdraws from a shipper the equal opportunity of taking advantage of the rates offered by a carrier, is a regulation or practice "affecting rates" within the meaning of that phrase as used in Section 15 of the Act.⁹⁵

§ 374. Discrimination in granting Transit Privileges.

¶ A. CARRIERS MUST NOT DISCRIMINATE IN ALLOWING TRANSIT PRIVILEGES.

Stopping a commodity in transit for treatment or re-consignment is in the nature of a special privilege which the carrier may concede, but which the shipper, under the present state of the law, cannot demand as a matter of lawful right; but carriers may not unjustly discriminate between markets or individuals in the granting of such privileges.⁹⁶

¶ B. DISCRIMINATION BETWEEN MANUFACTURED PRODUCTS.

There is much to be said in favor of milling and manufacturing in transit, and there is much that can be said about the irregular and discriminatory practices that are invited and possible thereunder.

There is, of course, a limit to the products which can reasonably be included in the list of those which will be transported

⁹⁴ Traffic Bureau of Merchants' Exchange, etc., v. C. B. & Q. Ry. Co. et al., 14 I. C. C. R. 317.

⁹⁵ Rail & River Coal Co. v. B. & O. Rd. Co., 14 I. C. C. R. 86.

⁹⁶ St. Louis Hay & Grain Co. et al. v. M. & O. Rd. Co. et al. (1905), 11 I. C. C. R. 90; Shiel & Co. v. Ill. Cent. Rd. Co. et al. (1907), 12 I. C. C. R. 210.

at the raw material rate, either with or without a transit privilege. It might be reasonable to withhold transit privilege from a product that is essentially different from the raw material and from the other products of the same raw material which are accorded transit rates, as, for example, a liquid product of grain; but it is clearly discriminatory to single out one or more of several milled products of grain and withhold from it or them transit privilege which is granted at that or some other competitive point to other milled products of grain substantially similar in character, value, and packing, and which are transported under substantially the same conditions, attended by substantially equal risks, where there is competition between the millers of the grain either in marketing their product or in securing their material for milling.⁹⁷

¶ C. DISCRIMINATION BETWEEN LOCALITIES IN THE ALLOWANCE OF TRANSIT PRIVILEGES.

Defendants granted certain allowances on free services in the elevation, transfer, mixing, cleaning and other handling of grain at Kansas City, Mo., Argentine, Leavenworth and Kansas City, Kas., which were withheld by them at Atchison, Kas., to which point they had established the same rates as those in force at said other cities. *Held*, That such practice was unlawful and that defendants should not furnish at Kansas City, Mo., Kansas City, Leavenworth or Argentine, Kas., elevation allowances or other free services in connection with the elevation, transfer, mixing, cleaning, clipping, drying, weighing, storage, loading out or shipment of grain which were not at the same time granted or furnished in like or equivalent service or allowance to the same degree and extent at Atchison.⁹⁸

Allowance by a carrier to shippers in one territory of the privilege of milling in transit must be without wrongful preju-

⁹⁷ Douglas & Co. v. C. R. I. & P. Ry. Co. et al. (1909), 16 I. C. C. R. 233.

⁹⁸ City Council of Atchison v. Mo. Pac. Ry. Co. et al. (1907), 12 I. C. C. R. 111; motion for rehearing denied; 12 I. C. C. R. 254.

dice to the rights of shippers in another territory served by the same line.⁹⁹

§ 375. Discrimination between Localities.

¶ A. PROVISION OF THE STATUTE.

The Act to Regulate Commerce declares that it shall be unlawful for any common carrier subject to its provisions to make or give any undue or unreasonable preference or advantage to any particular locality in any respect whatsoever, or to subject any particular locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.¹⁰⁰

¶ B. A LOCALITY IS ENTITLED TO THE BENEFIT OF ITS NATURAL ADVANTAGES.

Advantages of location, such as proximity to a navigable stream or strong competition between carriers, naturally results in lower rates to a town so situated, and it is not in the province of the Commission to disturb the resulting rate relation unless the discrepancy is so great as to effect an unjust discrimination against the noncompetitive point.¹⁰¹

Natural advantages of location are neither to be enlarged or minimized by the Commission, whose duty and purpose is to secure just and reasonable transportation rates, as nearly equal as possible for all localities and individuals, having due regard to differences of circumstances and conditions.¹⁰²

Manufacturing industries should not be deprived, through a carrier's adjustment of relative rates, of advantages resulting from their favorable location in respect of cost of raw material supplied from a common source, or of distance to the common market for the finished product.¹⁰³ Neither have carriers the right to disregard such distances and natural ad-

⁹⁹ Koch v. Pa. Rd. Co. et al. (1905), 10 I. C. C. R. 675.

¹⁰⁰ See note 3, supra.

¹⁰¹ Payne & Gardner Co. v. L. & N. R. R. Co., 13 I. C. C. R. 638.

¹⁰² Enterprise Mfg. Co. et al. v. Georgia Rd. Co. et al., 12 I. C. C. R. 451.

¹⁰³ James & Abbott v. Can. Pac. Ry. Co. et al., 4 I. C. R. 274.

vantages for the purpose of bringing about commercial equality.¹⁰⁴

A town favorably situated with respect to one through route, but competing in a common market with another town more favorably situated on another through route, should not have a reduction of the local rate over roads connecting the two through routes for the purpose of overcoming the natural advantage which the latter competing town enjoys.

A milling town possessing great natural, acquired and improved advantages for the carrying on of that industry, and favorably situated in point of distance to a large grain-producing region, is entitled to the benefits arising from its location and carriers of grain to that point and to a competing town considerably more remote from points of production, and in other particulars less advantageously located, are not justified in making rates on grain to the competing towns which destroy the advantage the former is entitled to enjoy.¹⁰⁵

¶ C. DISCRIMINATION DUE TO UNFAVORABLE LOCATION NOT UNLAWFUL.

Complainants situated in the eastern portion of Washington County, Maine, alleged that by reason of their location they could not take advantage of the milling-in-transit privilege on corn, although their competitors at Bangor and Lewiston, Me., could do so, and that therefore allowance of the transit privilege at Bangor and Lewiston constituted undue discrimination against complainants; *Held*, That the disadvantage under which the complainants labored was primarily due to their unfavorable location, and that it was not the province of the Commission to overcome disadvantages of this nature by adjustment of the transportation charges.¹⁰⁶

¹⁰⁴ Commercial Club, etc., v. C. R. I. & P. Ry. Co. et al., 6 I. C. R. 647.

¹⁰⁵ Chamber of Commerce of Minneapolis v. Gr. Nor. Ry. Co. (1892), 4 I. C. R. 230; Valley Flour Mills v. A. T. & S. F. Ry. Co. et al. (1909), 16 I. C. C. R. 73.

¹⁰⁶ Quimby et al. v. Me. Cent. Rd. Co. et al. (1908), 13 I. C. C. R. 246.

¶ D. CARRIERS MAY NOT FOSTER INDUSTRIES ON THEIR OWN LINES TO PREJUDICE OF OTHERS.

It is the duty of a common carrier to receive and carry, upon reasonable terms, all goods tendered in suitable condition, and it cannot lawfully discriminate in favor of any person, product, or locality.

A common carrier, in order to build up and foster industries on its own lines, cannot lawfully refuse to carry the products of like industries located on connecting lines,¹⁰⁷ i. e., a common carrier can not impose an unreasonable rate because of the origin of the traffic.^{107a}

¶ E. CARRIERS MAY NOT CREATE ARTIFICIAL MARKET CONDITIONS.

A carrier cannot lawfully establish and maintain an adjustment of rates which in practice prevents shippers on its line from availing themselves of a principal market, which they have long been using, and confers a substantial monopoly upon a new market in which, for reasons of its own, it has greater interest.

When a carrier makes rates to two competing markets which give the one a practical monopoly over the other because it can secure reshipments from the favored locality and none from the other, it goes beyond serving its fair interest, and disregards the statutory requirement of relative equality as between persons, localities and particular descriptions of traffic.¹⁰⁸

A carrier has no right to insist that a shipment go to the end of its rails if the shipper desires it to be diverted at an intermediate point to another market off its rails. Nor may a

¹⁰⁷ *Standard Lime & Stone Co. et al. v. Cumberland Valley Rd. Co. et al.* (1909), 15 I. C. C. R. 620; decision in *Waxelbaum & Co. v. A. C. L. R. R. Co.* (1907), 12 I. C. C. R. 183 and *Cardiff Coal Co. v. C. M. & St. P. Ry. Co. et al.* (1908), 13 I. C. C. R. 460 adhered to.

^{107a} *Acme Cement Plaster Co. v. Chicago Great Western Ry. Co. et al.* (1910), 18 I. C. C. R. 19.

¹⁰⁸ *Savannah Bureau of Freight and Transportation et al. v. L. & N. Rd. Co. et al.*, 8 I. C. C. R. 377; order of Commission enforced, *I. C. C. v. L. & N. Rd. Co. et al.*, 118 Fed. Rep. 613.

carrier accomplish these results indirectly by any unreasonable adjustment of its rate schedules with that end in view. It cannot lawfully compel the shipping public to contribute to its revenues on any such grounds.¹⁰⁹

The opportunity to buy in a widely extended market is a valuable one to merchants, in that it presents a larger field for competition and ordinarily offers the best quality at the lowest price, and a carrier has no right, by refusing through routes and joint rates, to restrict or circumscribe this opportunity. It is the duty of common carriers to haul the traffic that is offered and to make necessary arrangements and furnish facilities and establish rates therefor; and a carrier is not justified in refusing traffic from points on other lines on the ground that such traffic would displace in the markets traffic from points on its own lines and thus adversely affect its revenue.¹¹⁰

It is neither sound in principle nor equitable in practice for railway lines to create artificial differences in market conditions by an arbitrary differential in rates whereby the product of one section of the country is assigned to one market and the product of another section of the country to another market.¹¹¹

¶ F. CARRIERS MAY NOT FAVOR A LARGE TOWN AGAINST A SMALLER ONE.

The mere fact that a given town has been recognized as a "trade center" and is enabled by its more favorable rate adjustment to distribute in a certain territory, cannot justify the continuance of relative rates which result in undue preference.¹¹² The law contemplates relatively fair rates as between different places, and the dealer located in a small town is entitled to a reasonable adjustment which will enable him to compete on an equitable basis with dealers at trade centers enjoying the benefit of competitive rates.¹¹³

¹⁰⁹ Chamber of Commerce of Milwaukee v. C. R. I. & P. Ry. Co. et al., 15 I. C. C. R. 460.

¹¹⁰ Star Grain & Lumber Co. et al. v. A. T. & S. F. Ry. Co. et al., 14 I. C. C. R. 364.

¹¹¹ Re Export Rates, etc., 8 I. C. C. R. 185.

¹¹² See note 101, *supra*.

¹¹³ See note 101, *supra*.

¶ G. DISCRIMINATION BETWEEN GROUP POINTS.

A carrier cannot lawfully so group its mines with respect of rates as to unduly discriminate against any locality. The duty imposed by law is to give equal treatment to all shippers who are in position to demand it, and this includes the right to reach competitive markets on relatively equal terms.

Carriers are not required by law, and could not in justice be required, to equalize natural disadvantages, such as location, cost of production, and the like. Where, however, the same carrier serves two districts which, by their location, the character of their output, and distance from markets where their product must be disposed of are in substantially similar circumstances and conditions, the serving carrier cannot lawfully prefer one to the other in any manner whatsoever.¹¹⁴

¶ H. LONG-AND-SHORT-HAUL CLAUSE AND RELIEF FROM OPERATION THEREOF.

See *Chapter 8, ante*, for full consideration.

¶ I. COMPETITION NOT NECESSARILY A JUSTIFICATION IN THE ESTABLISHMENT OF PREFERENTIAL RATES.

Railway companies are not prohibited by Section 3 of the Act from preferring one locality over another unless the preference is undue and unreasonable, but a preference which is without legitimate excuse is, in and of itself, undue and unreasonable.

Under decisions of the United States Supreme Court, *Import Rate Case*,¹¹⁵ and the *Troy Case*,¹¹⁶ railway competition may, but it does not necessarily, justify a preference to a particular locality or common duty; and therefore, granting that discrimination against a locality which is based on such com-

¹¹⁴ *Black Mountain Coal & Land Co. et al. v. Southern Ry. Co. et al.*, 15 I. C. C. R. 286 (1909).

¹¹⁵ *Import Rate Case*, *T. & P. Ry. Co. v. I. C. C.*, 162 U. S. 197; 40 L. ed. 940, 16 Sup. Ct. 666; 5 I. C. R. 405.

¹¹⁶ *Troy case*, *I. C. C. v. Alabama Midland Ry. Co.*, 168 U. S. 144; 40 L. ed. 414, 18 Sup. Ct. 45.

petition is excusable in theory, the question still remains whether under the third section of the Act it is undue or unreasonable; and the question is one of fact in each case.¹¹⁷

¶ J. DISCRIMINATION BETWEEN LOCALITIES IN THE ASSESSMENT OF TERMINAL CHARGES.

Railroad companies entering Chicago imposed a terminal charge for delivery of live stock at the Union Stock Yards, Similar charges were not imposed for delivery of live stock at other markets such as Kansas City, Sioux City and Omaha. *Held*, That the imposition of the terminal charge at Chicago, while similar charges were not made at the other markets, was not unlawful under Section 2 of the Act, since the services were not rendered over the same line and were therefore not "like" within the meaning of that section.¹¹⁸

¶ K. MAINTENANCE OF FREE "PICKUP" AND DELIVERY EXPRESS SERVICE AT ONE POINT AND NOT AT ANOTHER.

The right of an express company to maintain a free package pickup and delivery service at one point, while not maintaining such a service at another point, must necessarily be controlled by the conditions existing at each place. An express service at a large commercial and manufacturing town like Fall River, Mass., that does not include a free pickup and delivery would not meet the present-day requirements, and would be wholly unsatisfactory. But because such service is maintained at Fall River, where the volume of the traffic is large, and a wagon service can be conducted economically, it by no means follows that a like service must be maintained at Bristol Ferry, R. I., where the traffic is small and the cost of keeping up a wagon service might more than absorb all the revenue.¹¹⁹

¹¹⁷ *New York Produce Exchange v. B. & O. Rd. Co.*, 7 I. C. C. R. 612; *Phillips, Bailey & Co. v. L. & N. Rd. Co. et al.*, 8 I. C. C. R. 93.

¹¹⁸ See note 18, *supra*.

¹¹⁹ *Phillips v. N. Y. & Boston Despatch Express Co.*, 15 I. C. C. R. 631. See also *Strauss v. American Express Co. et al.* (1910), 19 I. C. C. R. 112.

§ 376. Discrimination between Connecting Carriers in furnishing Facilities for Interchange of Traffic.

See *Section 669, post.*

§ 377. Refusal of Express Company to extend "C. O. D." Service to Shipments of Liquor.

Under date of June 15, 1907, defendants established a rule which provides that they will not undertake to collect for shippers the purchase price of intoxicating liquors—that is to say, they will not perform for that traffic what is known as "C. O. D." service. *Held*, That, in view of the practical difficulties attending the "C. O. D." carriage of intoxicating liquors, the discrimination against that traffic resulting from the rule in question is not undue, and therefore not in violation of the statute.¹²⁰

§ 378. Preference in Expedition of Military Traffic in Time of War.

The statute provides that in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and that carriers shall adopt every means within their control to facilitate and expedite the military traffic.¹²¹

§ 379. Discrimination in Fares for Transportation of Passengers.

¶ A. POSITION OF PASSENGER NOT GOOD GROUNDS FOR DISCRIMINATION.

The means, occupation or purpose of parties are not proper considerations upon which to found discriminations among them in the sale of passenger tickets.¹²²

¹²⁰ Royal Brg. Co. v. Adams Express Co. et al., 15 I. C. C. R. 255.

¹²¹ Act to Regulate Commerce. Section 6.

¹²² Smith v. Nor. Pac. R. R. Co. (1887), 1 I. C. R. 611; 1 I. C. C. R. 208.

¶ B. EXACTION OF ADDITIONAL SUM FOR FAILURE OF PASSENGER TO PRODUCE TICKET.

It was a regulation of the respondent company published on its tariff schedules filed and posted as required by the Act to Regulate Commerce, that the conductor should collect fare on trains from passengers without tickets adding 25 cents to single-trip fares. *Held*, That it was not unjust discrimination against the complainant to exact this addition from him.¹²³

¶ C. ROUND-TRIP FARE NOT UNJUSTLY DISCRIMINATORY AGAINST HIGHER ONE-WAY FARE.

While it would be unjust to charge A a greater sum than B for a single trip from Washington to Pittsburg, if A agrees not only to go but to return by the same route, it is no injustice to B to permit him to do so for a reduced fare, since the services are not alike nor the circumstances and conditions substantially similar, as required by Section 2 of the Act to make an unjust discrimination.¹²⁴

It is not unjust discrimination under the statute for a carrier to make reasonable concessions in the way of reduced passenger fares in consideration of longer service and more frequent trips.¹²⁵

The Interstate Commerce Act was not designed to prevent competition between different roads, nor to interfere with the customary arrangement made by railway companies for reduced fares in consideration of increased mileage, where such reduction does not operate as an unjust discrimination against other persons traveling over the road.¹²⁶

¶ D. SPECIAL RATES ON IMMIGRATION TRAFFIC.

There is nothing illegal or wrongful in a railroad company in making a rate for immigrants as a class and declining to give the same rate to others for whom different accommodations are furnished.¹²⁷

¹²³ *Sidman v. R. & D. R. Co.* (1890), 3 I. C. R. 512; 2 I. C. R. 766.

¹²⁴ See note 26, *supra*.

¹²⁵ See note 23, *supra*.

¹²⁶ See note 26, *supra*.

¹²⁷ *Savery & Co. v. N. Y. C. & H. Rd. Co. et al.* (1888), 2 I. C. C. R. 338, 2 I. C. R. 210.

¶ E. DISCRIMINATION BETWEEN MINISTERS OF DIFFERENT DENOMINATIONS IN GRANTING REDUCED FARES.

Although the statute gives carriers the privilege of issuing free or reduced-rate transportation to ministers of religion, yet the action of a railroad company in charging ministers of one denomination full fare and those of another half fare, has been held to amount to an unjust discrimination.¹²⁸

¶ F. PARTY-RATE TICKETS NOT UNJUSTLY DISCRIMINATORY AGAINST SINGLE PASSENGER FARES.

See *Section 564, post*.

¶ G. DISCRIMINATION BETWEEN PARTY CLASSES IN GRANTING PARTY RATES ILLEGAL UNDER SIMILAR CIRCUMSTANCES AND CONDITIONS.

The carriage on a party-rate ticket of ten persons belonging to a theatrical company, and the carriage on individual tickets of ten other persons of different vocations traveling as a party, *Held*, To be "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," since the words "circumstances and conditions" refer to the carriage itself, and not to extraneous facts, such as the vocation of the passengers; that if party-rate tickets were issued by a carrier to theatrical companies, it could not lawfully refuse to issue such tickets to the general public.¹²⁹

¶ H. WHERE DIFFERENCE IN CHARGE TO PARTY CLASSES WAS JUSTIFIED.

A railroad company published in its schedule a provision that one-way, ten-party-rate tickets would be sold at reduced rate to "theatrical, operatic, or concert companies, hunting and fishing parties, glee clubs, brass or string bands, boat, baseball, polo, golf or tennis clubs, football teams, and other parties of like character." The United States Government

¹²⁸ See note 25, *supra*.

¹²⁹ *Re Party-Rate Tickets*, 12 I. C. C. R. 95 (1907).

claimed the benefit of the ten-party rate for transportation of its soldiers. The sale of party-rate tickets to the classes enumerated was for cash, while that to the Government was on credit. The giving of exhibitions and entertainments by the classes provided for induced the general public to travel, thereby increasing the business of the company. The transportation of soldiers did not increase such business. *Held*, That the Government was not entitled to the benefit of the ten-party rate; that the service rendered in transporting soldiers was not like, nor performed under circumstances and conditions substantially similar to that rendered in transporting the classes enumerated; that the discrimination was not therefore unjust within the meaning of Section 2 nor the prejudice undue or unreasonable within the meaning of Section 3 of the Act to Regulate Commerce.¹³⁰

Railway companies are only bound under the Interstate Commerce Act to give the same terms to all persons alike under the same conditions and circumstances, and any fact which produces an inequality of conditions and a change of circumstances justifies an inequality of charge.¹³¹

¶ I. LEGALITY OF MILEAGE, EXCURSION AND COMMUTATION PASSENGER TICKETS.

See *Section 562, post*.

¶ J. ISSUANCE OF EXCURSION TICKETS ON ONE OCCASION AND REFUSAL TO ISSUE ON SIMILAR OCCASION.

The exceptive phrase in Section 22 of the Act, "that nothing in this Act shall prevent * * * the issuance of mileage, excursion or commutation passenger tickets," does not provide against discrimination by the issuance of excursion tickets for one occasion or refusal to issue them on account of a similar event.¹³²

The provisions of Section 22 of the Act do not entirely ex-

¹³⁰ See note 25, *supra*.

¹³¹ See note 26, *supra*.

¹³² *Cator v. Southern Pacific Co. et al.* (1893), 6 I. C. C. R. 113, 4 I. C. R. 397.

empt the issuance of excursion tickets from the operation of the undue discrimination provision of the Act, but the statute itself authorizes discrimination permitting the issuance of excursion tickets, and it is only in cases where this privilege has been plainly abused that the Commission would be justified in interfering.¹³³

¶ K. EXCURSION OR COMMUTATION TICKETS VERSUS MILEAGE TICKETS.

The fact that excursion or commutation tickets are put on sale at a given rate, does not entitle the purchaser of a mileage ticket (each class of ticket being issued for a distinct purpose and the form of contract in each case being different) to complain of unjust discrimination if charged a higher rate.¹³⁴

§ 380. Ticket Brokerage as a means of Unjust Discrimination and Undue Preference.

¶ A. SALE OF CUT-RATE PASSENGER TICKETS RESULTS IN A VIOLATION OF THE ACT TO REGULATE COMMERCE.

When the restrictions embodied in the Act concerning equality of rates and the prohibitions against preferences are borne in mind the conclusion cannot be escaped that the right to issue tickets of the class referred to carried with it the duty of the carrier of exercising due diligence to prevent the use of such tickets by other than the original purchasers, and therefore caused the nontransferable clause to be operative and effective against anyone who wrongfully might attempt to use such tickets. Any other view would cause the Act to destroy itself, since it would necessarily imply the right to disregard the prohibition against preferences, which it was one of the great purposes of the Act to render efficacious. This must follow, since, if the return portion of the round-trip ticket be used by one not entitled to the ticket, and who

¹³³ Weber Club & Intermountain Fair Ass'n. v. Oregon Short Line Rd. Co. et al. (1909), 17 I. C. C. R. 212.

¹³⁴ Associated Wholesale Grocers of St. Louis v. Mo. Pac. R. Co. (1887), 1 I. C. C. R. 393; 1 I. C. C. R. 156.

otherwise would have had to pay the full one-way fare, the person so successfully traveling on the ticket would not only defraud the carrier but effectually enjoy a preference over similar one-way travelers who had paid their full fare and who were unwilling to be participants in a fraud upon the railroad company.¹³⁵

¶ B. ACTIONABLE WRONG COMMITTED BY PERSON CARRYING ON BUSINESS OF TICKET BROKERAGE.

An actionable wrong is committed by one who maliciously interferes in a contract between two parties and induces one of them to break that contract to the injury of the other,¹³⁶ and this principle applies to carrying on the business of purchasing and selling nontransferable reduced-rate railroad tickets for profit to the injury of the railroad company issuing them, and this even though the ingredient of actual malice in the sense of personal ill will, does not exist.¹³⁷

When the dealings of a class of speculators in nontransferable tickets have assumed great magnitude, involving large cost and risk to the railroad company in preventing the wrongful use of such tickets, and the parties dealing in them have expressly declared their intention of continuing so to do, a Court of equity has power to grant relief by injunction.¹³⁸

¶ C. POWER OF FEDERAL COURT TO ISSUE INJUNCTION RESTRAINING TICKET SCALPERS FROM DEALING IN THE FUTURE IN CUT-RATE TICKETS.

Every injunction contemplates the enforcement as to the party enjoined, of a rule of conduct for the future as to the wrongs to which the injunction relates, and a Court of equity may

¹³⁵ *Bitterman v. L. & N. Rd. Co.* (1907), 207 U. S. 205; 52 L. ed. 171, 28 Sup. Ct. 91, affirming 144 Fed. Rep. 34, 75 C. C. A. 192. For comments of the Commission on ticket brokerage see its Annual Reports to Congress for 1890 and 1895.

¹³⁶ *Angle v. C. & St. P. Ry. Co.*, 151 U. S. 1, 38 L. ed. 55, 14 Sup. Ct. 240.

¹³⁷ See note 135, *supra*.

¹³⁸ *Ibid*.

extend an injunction so as to restrain the defendants from dealing, not only in nontransferable tickets already issued by the complainant railroad, but also in *all* tickets of a similar nature which shall be issued in the *future*; and the issuing of such an injunction does not amount to an exercise of legislative, as distinct from judicial, power, and a denial of due process of law.¹³⁹

**§ 381. Discrimination between White and Colored Passengers.
"Jim Crow" Cars.**

A case involving alleged undue discrimination against colored persons was decided by the Commission on June 24, 1907.¹⁴⁰ The complainant in this case, Georgia Edwards, was a negro woman residing at Chattanooga, Tenn., and the defendant was the Nashville, Chattanooga & St. Louis Ry. Co., operating the Western & Atlantic Railroad. On August 31, 1906, the complainant purchased a ticket entitling her to a first-class passage from Chattanooga, Tenn., to Dalton, Ga., over defendant's said line of railway. She entered and occupied a seat in a car assigned to passengers other than negroes, whereupon she was informed by the carrier's flagman that she was in the wrong car and was requested to go to that portion of another car set apart for the use of people of her race. This she refused to do, whereupon the flagman notified the carrier's assistant station agent of the circumstances and the latter removed the complainant to the car last referred to, using only such force as was necessary for that purpose. Complainant claimed that the car into which she was removed was not as clean as the car first occupied by her, but this claim was not supported by the record.

These two cars were of the same quality, having seats of the same size, upholstered in a like manner, and with exactly the same quality of goods. One of them was used by white passengers, and was provided with towels and wash bowl, while the other was without such conveniences. The latter was con-

¹³⁹ See note 135, *supra*.

¹⁴⁰ *Edwards v. N. C. & St. L. Ry. Co.*, 12 I. C. C. R. 247 (1907), cited in *Cozart v. Southern Ry. Co.* (1909), 16 I. C. C. R. 226.

structed as follows: A partition placed in the middle of the car divided it into two compartments and entrance from one to the other was through a swinging door which, after being opened, closed automatically. Negro passengers were required to occupy one of these compartments, while the other was occupied by other passengers who wished to smoke.

In one end of the other passenger coach there was a compartment for smokers accommodating seven persons, but defendant did not provide any separate smoking compartment for negroes, while only one toilet was provided in the negro compartment, the car which was entirely used by other passengers had two, marked in such a way as to indicate that one was to be used by men and other by women; but such restriction was only partially enforced. The principal reason for providing two toilets in one case and only one in the other was that the number of passengers carried in the negro compartment was very much less than the number contemporaneously transported in the other car. The carrier assigned to the use of negro passengers about one-sixth of the space in its passenger train, while the number of negroes transported by the defendant was only about one-fifteenth of the total.

When there were no women in the colored apartment, smoking there was allowed, but not otherwise. It sometimes happened that a car provided by defendant for the use of white passengers had no wash basin and only one toilet and no smoking compartment, and smoking was allowed in such cars if there were no women present.

The broad question of the right, under the thirteenth and fourteenth amendments to the Constitution to segregate white and colored passengers has been upheld by the Supreme Court of the United States.¹⁴¹

¹⁴¹ Hall v. DeCuir (1877), 95 U. S. 485; 24 L. ed. 547; L. N. O. & T. Ry. v. Mississippi (1889), 131 U. S. 587, 33 L. ed. 784, 2 I. C. R. 801, 10 Sup. Ct. Rep. 348; Plessy v. Ferguson (1896), 163 U. S. 537, 41 L. ed. 256, 16 Sup. Ct. Rep. 1138; C. & O. Ry. v. Kentucky (1899), 179 U. S. 388, 45 L. ed. 244, 21 Sup. Ct. Rep. 101; J. Alexander Chiles v. C. & O. Ry. Co. decided by Supreme Court May 21, 1910, affirming 125 Ky. 299, 101 S. W. 386.

In the case of *Councill v. Western & Atlantic R. R. Co.*,¹⁴² Mr. Commissioner Morrison, speaking for the unanimous Commission, therein said: "Public sentiment, wherever the colored population is large, sanctions and requires this separation of races, and this was recognized by counsel representing both complainant and defendant at the hearing. We cannot, therefore, say, that there is any undue prejudice or unjust preference in recognizing and acting upon this general sentiment provided it is done on fair and equal terms. This separation may be carried out on railroad trains without disadvantage to either race and with increased comfort to both."

And again in case of *Heard v. Georgia Railroad Co.*,¹⁴³ Mr. Commissioner Schoonmaker held for the Commission that the separation of white and colored passengers paying the same fare is not unlawful if cars and accommodations, equal in all respects, are furnished to both and the same care and protection of passengers is observed.

While, therefore, the reasonableness of such regulations as to interstate passenger traffic is established, it by no means follows that carriers may discriminate between white and colored passengers in the accommodation which they furnish to each. If a railroad provides certain facilities and accommodations for first-class passengers of the white race, it is commanded by the law that like accommodations shall be provided for colored passengers of the same class. The principle that must govern is that carriers must serve equally well all passengers, whether white or colored, paying the same fare. Failure to do this is discrimination and subjects the passenger to undue and unreasonable prejudice and disadvantage.

In this case it was manifest that defendant unduly and unjustly discriminated in some particulars against colored passengers; and the Commission ordered therefore, that where the defendant carrier provides a wash bowl and towels in coaches devoted to the use of white passengers and a separate smoking compartment for such passengers also similar accom-

¹⁴² *Councill v. Western & Atlantic R. R. Co.* (1887), 1 I. C. C. R. 339; 1 I. C. R. 638.

¹⁴³ *Heard v. Georgia Rd. Co.*, 1 I. C. C. R. 428; 1 I. C. R. 719.

modations shall be provided for colored passengers paying the same fare.

§ 382. Through Passenger Arrangement which affects Rights of Passenger beyond Terminus of Line.

Where a railroad company, stage line and hotel association entered into an arrangement for a through route and joint rates from eastern cities to the Yellowstone National Park and for providing stage transportation through such park to passengers and accommodations thereat, the Commission in holding such an arrangement unlawful, stated that it is the duty of the railway company to so conduct and control its operations relating to the transportation of passengers to the Yellowstone Park as to afford such passengers full and equal opportunity at the terminus of its line at Gardiner, Mont., and elsewhere to select the stage line or other agency they may desire to use for touring the Park, and the places and manner of entertainment therein. *Held*, That such an arrangement affected an undue and unreasonable preference and advantage to the stage line and hotel association, and subjected the tourists and other passengers traveling to and from such reservation to undue and unreasonable prejudice and disadvantage.¹⁴⁴

§ 383. Right of Passenger to ride on Freight Trains if Extended must be Offered Impartially.

Upon inquiry made by a carrier, the Commission held, that it may not confine the right to travel on freight trains to a particular class, such as drummers and commercial agents, but if the privilege is permitted to one class of travelers it must be open to all others on equal terms and conditions.¹⁴⁵

§ 384. Jurisdiction of Interstate Commerce Commission over Unjust Discriminations and Undue Preferences.

¶ A. PROVISIONS OF THE STATUTE.

In enacting the Interstate Commerce Acts, Congress con-

¹⁴⁴ *Wylie v. Northern Pac. Ry. Co. et al.* (1905), 11 I. C. C. R. 145.

¹⁴⁵ Rule 45, Con. Rul. Bul. No. 4 (March 3, 1908).

ferred upon the Commission the power of determining whether, in given cases, the services rendered were alike and contemporaneous, whether the respective traffic was of a like kind, and whether the transportation was under substantially similar circumstances and conditions.¹⁴⁶

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) read as follows:

“That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this Act, or that any individual or joint classifications, regulations or practices whatsoever of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation or practice is just, fair and reasonable, to be thereafter followed; and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.”

¹⁴⁶ See note 33, *supra*.

¶ B. JURISDICTION OVER UNJUST DISCRIMINATION IN DISTRIBUTION OF CARS.

While the Act to Regulate Commerce contains no provision which expressly or by proper implication gives the Commission jurisdiction in cases merely showing delay or negligence in the receipt, forwarding or delivery of property offered for transportation, including the furnishing of cars, the regulating statute does prohibit unjust discrimination or wrongful prejudice in the provision of cars or other transportation facilities, as well as in the fixing and application of transportation charges.¹⁴⁷ The Commission has jurisdiction to forbid such discrimination and to award reparation for the detriment directly and proximately resulting from it.¹⁴⁸ Clearly the Commission has no jurisdiction to establish or fix in the first instance rules governing the conduct of the carrier's business or regulating its distribution of cars, but, as held in many decisions of the Commission, it has undoubted power and jurisdiction to deal with complaints that the practices of carriers work unjust discrimination against shippers or localities.¹⁴⁹

For more detailed discussion see *Section 172, ante*.

§ 385. Reparation for Damages account Unjust Discrimination.

See *Section 426, post*.

§ 386. Granting of Rebate or Concession as an Unjust Discrimination.

See "*Rebates and Concessions*," *Chapter 27, post*.

§ 387. Penalty of Carrier for Unjust Discrimination and Undue or Unreasonable Preference or Advantage.

See *Section 760, post*.

§ 388. Penalty of Party receiving Favors from Carriers.

See *Section 761, post*.

¹⁴⁷ See note 82, *supra*.

¹⁴⁸ See note 87, *supra*.

¹⁴⁹ *R. R. Com. of Ohio et al. v. H. V. Ry. Co.* (1907), 12 I. C. C. R. 398; *Red Rock Fuel Co. v. B. & O. Rd. Co.* (1905), 11 I. C. C. R. 438.

CHAPTER XXVII.

REBATES AND CONCESSIONS.

SECTION

- 389. Unlawful to offer, grant, give, solicit, accept or receive any Rebate from Published Rate or other Concession or Discrimination.
- 390. Meaning of the Term "Rate" as used in the Statute against Rebating.
- 391. Method of Rebating Immaterial.
- 392. Departure from Published Rate is the Essence of the Offense.
- 393. Declaring a False Valuation, False Billing and False Classification, Violation of the Statute.
- 394. Allowances to Terminal Railroads as a Medium of Rebating.
- 395. Allowances to "Tap Lines."
- 396. Allowances to Shippers for Services rendered or Instrumentalities furnished must not exceed the Actual Cost.
- 397. Allowance for Use of Private Track of Shipper as a Medium of Rebating.
- 398. Cancellation of Storage Charges as a Medium of Rebating.
- 399. Giving of Commissions as a Medium of Rebating.
- 400. Repayment by Carrier on account of Switch Track.
- 401. Joint Rebate not Essential to the Commission of the Offense.
- 402. Relief of Agent does not Relieve Carrier.
- 403. Refund on account of Full-Fare Transportation used by a Boy under 12 years of age not Permissible.
- 404. Penalty for offering, granting, giving, soliciting, accepting or Receiving any Rebate from Published Rates or other Concessions.

§ 389. Unlawful to offer, grant, give, solicit, accept or receive any Rebate from Published Rate or other Concession or Discrimination.

The Elkins Act declared that it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to the Act to Regulate Commerce and Acts amendatory there-

of whereby any such property shall by any device whatever be transported at a less rate than that named on the tariffs published and filed by such carrier, as is required by said Act to Regulate Commerce and Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced.¹

Section 6 of the Act to Regulate Commerce as changed by the amendment of June 29, 1906, provides that no carrier subject to its provision shall charge or demand or collect or receive a greater or less or different compensation for transportation of passengers or property, or for any service in connection therewith between the points named in the tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; and prohibits any carrier from refunding or remitting in any manner or by any device any portion of the rates, fares, and charges so specified, and from extending to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in such tariffs.

Section 2 of the Act to Regulate Commerce reads now just the same as when originally enacted and provides:

That if any common carrier subject to the provisions of this Act, shall, directly or indirectly, by any special rate, *rebate*, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered in the transportation of passengers or property, subject to the provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

§ 390. Meaning of the Term "Rate" as used in the Statute against Rebating.

The word "*rate*," as used in the statute, means the net cost to the shipper of the transportation of his property; that is, the net amount the carrier receives from the shipper and retains. In determining such amount in a given case, all money

¹ Elkins Act, Section 1.

transactions having a bearing on, or relation to, that particular instance of transportation, whereby the cost to the shipper is directly or indirectly enhanced or reduced, must be taken into consideration.² For example: A private stable-car company owned cars which were in general use by railway companies; and received compensation therefor from the railway companies computed on a mileage basis. The stable-car company, in order to induce shippers to demand of the railway companies that their stock be shipped in the cars of the stable-car company, made payments of money to shippers using its cars. The Court held, that the giving of any such allowance to a shipper whereby he secures the transportation of his property at a less *rate* than that named in the published tariff of the carrier for transportation of such property in its own cars, although *from* its own funds and without the connivance or knowledge of the carrier, is a violation of the statutes.³

§ 391. Method of Rebating Immaterial.

The all-embracing prohibition of the statute against either directly or indirectly charging less than the published rates has for its purpose the prohibitions of every method of dealing by a carrier by which the forbidden result can be obtained.⁴ A departure from the published rate by any means whatsoever, whether direct between the parties or indirect by the employment of a subterfuge, is prohibited and made unlawful by the Act.⁵

The Elkins Act is not restricted in its provisions to departures from an established tariff rate, but is violated if any other advantage is given to a shipper whereby a discrimination is practiced.⁶

² United States v. Chicago & Alton Ry. Co. (1906), 148 Fed. Rep. 646, *supra*; I. C. C. v. Reichmann (1906), 145 Fed. Rep. 235.

³ I. C. C. v. Reichmann (1906), 145 Fed. Rep. 235.

⁴ N. Y. N. H. & H. R. Rd. Co. v. I. C. C. (1906), 200 U. S. 361; 26 Sup. Ct. Rep. 272; 50 L. ed. 515, affirming I. C. C. v. C. & O. Ry. Co., 128 Fed. Rep. 59.

⁵ United States v. Standard Oil Co. (1907), 148 Fed. Rep. 719; Armour Packing Co. v. U. S. (1907), 153 Fed. Rep. 1; 82 C. C. A. 135.

⁶ United States v. Vacuum Oil Co. (1907), 153 Fed. Rep. 598; 82 C. C. A. 586.

In contemplation of the Act any method however skillfully devised by which an unlawful result is effected becomes devices for the end obtained. In such cases the law deals with the result produced and it is immaterial what means may be employed, for the purpose. If the result is unlawful the means employed comes within the condemnation of the statute.⁷

§ 392. Departure from Published Rate is the Essence of the Offense.

Where a tariff has been established on a commodity for a through interstate shipment, as provided by the Interstate Commerce Law, there can be no departure therefrom unless made according to law.⁸

The giving or receiving of a rebate or concession, whereby property in interstate or foreign commerce is transported at less than the established rate, is the essence of the offense denounced by the Elkins Act.⁹

The test to be applied in determining whether the law has been violated, is whether the carrier has transported property at a less rate than that named in the tariff.¹⁰

The payment of a rebate to some person other than the shipper constitutes the offense.¹¹

§ 393. Declaring a False Valuation, False Billing and False Classification, Violation of the Statute.

Upon an inquiry from a banking house whether it may lawfully declare a value of \$5,000 upon a package of negotiable bonds of the market value of \$10,000 and pay the express charge on the basis of the declared value, upon the understanding that in case of the loss of the bonds the express company will be responsible only for the amount so declared,

⁷ *Shamberg v. D. L. & W. Rd. Co. et al.* (1891), 4 I. C. C. R. 630; 3 I. C. R. 502; *Re Division of Joint Rates and other allowances to Terminal Railroad* (1904), 10 I. C. C. R. 385.

⁸ *United States v. Pennsylvania Rd. Co.* (1907), 153 Fed. Rep. 625.

⁹ *Armour Packing Co. v. United States* (1907), 153 Fed. Rep. 1; 82 C. C. A. 135.

¹⁰ *United States v. D. L. & W. R. Co.* (1907), 152 Fed. Rep. 269.

¹¹ *Ibid.*

it was held that a shipper falsely declaring the value of a package delivered to an express company for transportation violates the Act.¹²

The permission by a common carrier of the practice of underbilling the weight of freight or giving it a false classification, whereby less compensation is paid by one person than by another for "a like and contemporaneous service," is within the inhibition of the Act to Regulate Commerce.

The methods of inspection adopted by certain railroad companies, to detect and prevent underbilling and false classification, are approved by the Commission, but cannot be accepted as a substitute for the requirement that every carrier should itself be held, and in turn should itself hold every station agent, responsible for the correctness of the weight and classification of freight received, so far as the same can be practically ascertained.¹³

To avoid the payment of the published through rate on "switching coal" the complainant falsely billed a carload shipment as "bituminous soft-coal slack" and thus sought to secure the benefit of a lower combination of local rates on soft coal based on an out-of-line point; and in this plan the defendant's agents at point of origin joined. The Commission *held*, That as neither party comes before it with clean hands no relief order will be entered.¹⁴

§ 394. Allowances to Terminal Railroads as a Medium of Rebating.

The St. Louis, S. & P. Co., operated an extensive plant at Granite City, Ills. Within its private grounds were several thousand feet of railway which was connected by short tracks with the lines of interstate carriers. Their railway and connecting tracks were maintained and operated by the Granite City A. & E. Rd. On freight received from this company an allowance was made to it by the carrier of from 1/2 cent to

¹² Rule 58, Con. Rul. Bul. No. 4 (April 7, 1908).

¹³ *Re Underbilling* (1888), 1 I. C. C. R. 633; 1 I. C. R. 813.

¹⁴ *Sligo Iron & Stone Co. v. A. T. & S. F. Ry. Co.* (1909), 17 I. C. C. R. 139.

3 cents per hundred pounds. *Held*, That assuming the two companies mentioned were identical in ownership, the payments to the railroad company were not only in violation of the Elkins Amendment of February 19, 1903, but were rebates under the law as it existed before that amendment.¹⁵

The Hutchinson & A. R. Railroad owned from four thousand to five thousand feet of railway siding which connected the mill of the H. K. Salt Co., at Hutchinson, Kan., with the lines of interstate carriers. The railroad company owned no equipment and was not engaged as a common carrier. It was controlled by officers of the salt company and its earnings were also subject to that control. The carriers established joint rate with the railroad company on salt shipped from the mill of the salt company to Missouri River points, the railroad company being granted a division of 25 percent. The rates so established were the same as the local rates from Hutchinson to Missouri River. Other producers of salt at Hutchinson were charged the regular local rate. *Held*, That the arrangement with the railroad company was purely a scheme for the purpose of granting a concession in the rate; that the divisions allowed were unlawful.¹⁶

The International Harvester Company owned the capital stock of the Illinois Northern R. Co. and a controlling interest in the Chicago West Pullman & Southern R. Co. operating as terminal connecting roads in and about the City of Chicago between the plant of the Harvester Co. and various other industries and connecting roads leading to the Missouri River and other sections of the country. The service performed by these terminal roads was essentially a switching service. It had been performed for years by these railroads upon that basis. But at the time of the hearing both roads were receiving in many instances, not a switching charge, but a division of the through rate. The average allowance being twenty percent of the rate, amounting in some cases to \$12 per car as

¹⁵ Re Division of Joint Rates and other allowances to Terminal Railroads (1905), 10 I. C. C. R. 661.

¹⁶ Re Transportation of Salt from Hutchinson, Kas. (1904), 10 I. C. C. R. 1.

against a former maximum switching charge of \$3.50 per car. The Commission *held*, That \$3.50 per car was a reasonable charge for the performance of these switching services, and that anything above that was unreasonable, and that the divisions were not regarded by the carriers which granted them as a legitimate charge for the performance of the service, and that they did, in fact, in so far as they exceed a reasonable compensation for the performance of the service, amount to a direct preference in favor of the International Harvester Company.¹⁷

The Chicago, Lake Shore & Eastern R. Co., owned by the United States Steel Corporation, was a terminal road operated between the Illinois Steel Company's works, near Chicago, and connecting with roads leading east, west, and south. It received a division of 10 percent of the rate to the seaboard; 15 percent to Buffalo and Pittsburg, and 20 percent to the Missouri River and beyond, and in some cases obtained special divisions. These divisions were found to be grossly excessive for the service rendered and to afford unlawful preference to the United States Steel corporation which owns and controls the Illinois Steel Co.¹⁷

A cardinal purpose of the Act to Regulate Commerce is to prohibit all preferences between shippers, and the framers of that Act and its amendments have evidently attempted to make the language sufficiently comprehensive to render every sort of preference, by whatever means attempted, unlawful. The second section of the original Act provides that no greater compensation shall be collected of one shipper than of another "by any special rate, rebate, drawback, or other device." The third section provides that it shall be unlawful for a common carrier subject to the Act to grant any undue preference to any individual or any species of traffic "in any respect whatsoever." The amendment of the Act, approved February 19, 1903, commonly known as the Elkins Bill, requires carriers in all cases to publish their tariffs, and prohibits, under severe penalty, any practice upon the part of the carrier "whereby

¹⁷ Re Division of Joint Rates and other allowances to Terminal Railroads (1904), 10 I. C. C. R. 385.

any such property shall, by any device whatever, be transported at a less rate than that named in the tariff, * * * or whereby any other advantage is given or discrimination is practiced."

The manifest intention of the Act to Regulate Commerce, especially as expressed in the Elkins Amendment, is to strike through all pretense, all ingenious device, to the substance of the transaction itself; and where excessive divisions of rates are granted by a carrier to another carrier owned and controlled by a shipper, for the purpose of obtaining the traffic of that shipper, they benefit the shipper and operate as a rebate or other device to cut the tariff charge in violation of the law.

While there may be great objections to allowing shippers to build and operate railroads over which their traffic moves, such action is not prohibited by the Act to Regulate Commerce, and the mere fact that the property of a common carrier is owned by the largest individual shipper over it, or that it was originally constructed for the doing of the work of that shipper, furnishes no reason why it cannot make joint rates and agree upon joint divisions with other railroads. The vice in such cases is to be found in the thing done, not in the manner of doing it.¹⁸

§ 395. Allowances to "Tap Lines."

In the case of *Central Yellow Pine Association v. V., S. & P. Rd. Co.*¹⁹ lumber mill operators owned and controlled short originating roads called "tap lines" which were used in transporting the timber and logs from the forests to the lumber mill. The interstate railroads handling the lumber shipments established through rates with these "tap lines" and allowed them divisions of the rates for the services performed by them. It appeared that the payment of these divisions in all cases was made to a so-called railway company which was merely

¹⁸ Re Division of Joint Rates &c., to Terminal Railroads, 10 I. C. C. R. 385 (1904).

¹⁹ *Central Yellow Pine Assn. v. V. S. & P. Rd. Co. et al.* (1904), 10 I. C. C. R. 193, cited and applied in *Central Yellow Pine Assn. v. I. C. Rd. Co. et al.* (1904), 10 I. C. C. R. 505.

a department of the mill company; in other cases it appeared to be a separate firm composed of the same individuals; in still other cases it was a chartered corporation whose stock was owned by the mill company or the proprietors of that company; whatever money was received by it, however, inured to the benefit of the mill company finally if not directly.

The Commission held that "tap lines" were private properties of the mill owners and that these allowances amounted to rebates and therefore unlawful under the Act. That it was immaterial whether the logs were brought to the mill by steam railroad, horse railroad, wagon, or other means of conveyance.

§ 396. Allowances to Shippers for Services rendered or Instrumentalities furnished must not exceed the Actual Cost.

The Commission has stated, that while it is true that under the terms of the amended Act to Regulate Commerce a shipper may receive in the rate charged, a "just and reasonable" allowance from a carrier for any service or instrumentality furnished by him in connection with the transportation of his own property, this provision, however, must be read in connection with other provisions of the law forbidding and making unlawful any arrangement or practice that results in an undue preference or an unjust discrimination in favor of one shipper against others, or that results in a rebate or other departure from the lawfully published rates.

Therefore if the allowance involves a profit over and above the actual cost of the service rendered it becomes, when made to a shipper, a rebate and an unlawful discrimination to the extent of the profit realized. It is not a rebate when it does not exceed the actual cost. But to avoid that fundamental objection the actual cost of the service rendered must be the limit of the allowance.²⁰

§ 397. Allowance for Use of Private Track of Shipper as a Medium of Rebating.

The Chicago & Alton was an interstate carrier, running east from Kansas City, Mo. The Belt Railway Company operated

²⁰ Federal Sugar Refining Co. of Yonkers v. B. & O. R. R. Co. et al., 17 I. C. C. R. 40.

a belt line from Kansas City, Kans., to Kansas City, Mo., connecting with the Chicago & Alton and with a private track of the Schwarzschild & Sulzberger Co., at Kansas City, the latter doing a packing business. The tariff of the Chicago & Alton stated that its rate east included the Belt Company's charge. The Chicago & Alton had collected from Schwarzschild & Sulzberger Co. its schedule rate, and prior to 1901, had remitted to the Belt Co. \$4 per car. The Belt Company's rate was \$3 per car, and that company had thereupon paid the Schwarzschild & Sulzberger Co. \$1 per car. After 1901, at the request of the Schwarzschild & Sulzberger Co., the Chicago & Alton had paid the Belt Co. \$3 per car, and the Schwarzschild & Sulzberger Co. \$1 per car. The defendants contended that the payment was for the use of the Schwarzschild & Sulzberger Company's private track, and that if the law had been violated it was only in requiring the carrier to publish any terminal charge or regulation altering or determining the aggregate rate for transportation. *Held*, That the facts set out constituted a rebate.²¹

§ 398. Cancellation of Storage Charges as a Medium of Rebating.

After the arrival of the defendant's shipments of petroleum at destination, the carrier held the same in its custody and when a substantial claim for storage accrued it canceled the same. *Held*, That this amounted to a rebate in violation of the Elkins Law.²²

§ 399. Giving of Commissions as a Medium for Rebating.

¶ A. REFUNDS OR COMMISSIONS AS A CONDITION OF THE SALE OF TRANSPORTATION.

The Act prohibits a carrier from demanding, collecting, or receiving a greater or less or different compensation for transporting than that named in its tariffs in effect at the time. It prohibits the rebating or refunding to any person in any

²¹ United States v. Chicago & Alton Ry. Co. et al., 148 Fed. Rep. 646 (1906), affirmed 156 Fed. Rep. 558, 84 C. C. A. 324.

²² United States v. Standard Oil Co. (1907), 148 Fed. Rep. 719.

manner, or by any device whatsoever, any part of the lawful charges so collected. It is, therefore, manifestly unlawful for a carrier to refund to any association, committee, or person any part of the charges collected by the carrier as a condition of the sale of transportation.²³

¶ B. COMMISSIONS ON IMPORT TRAFFIC.

The Commission has held that the granting by carriers of commissions to persons acting as consignees on import traffic is a practice that cannot be sanctioned.²⁴

¶ C. DIVISION OF COMMISSION BETWEEN CARRIER'S AGENT AND SHIPPER.

The division of a commission between the soliciting agent of a carrier and a shipper operates to give the shipper a lower rate than that stated in the published schedule; and as the matter is within the control of the agent's employer, the carrier which permits it is guilty of a violation of the Act.²⁵

§ 400. Repayment by Carrier on account of Switch Track.

A shipper in 1895 paid \$200 to a carrier as part of the cost of constructing a spur to its warehouse. Upon application of the carrier to the Commission for permission to repay the amount to the shipper, *Held*, That the repayment would be unlawful unless the shipper had some equity or ownership in the track which he could transfer to the carrier in consideration of the payment.²⁶

§ 401. Joint Rebate not Essential to the Commission of the Offense.

It is not essential to the commission of the offense of giving a concession from a through rate over connecting lines of railroad under the Elkins Act that the rate be a joint one established by all of the carriers and published and filed with the Interstate Commerce Commission. If an initial carrier accepts traffic for transportation, and issues its bill of lading

²³ Rule 221, Con. Rul. Bul. No. 4 (July 8, 1907).

²⁴ Rule 7, Con. Rul. Bul. No. 3 (Nov. 18, 1907).

²⁵ See note 13, *supra*.

²⁶ Rule 110, Con. Rul. Bul. No. 3 (Nov. 10, 1908).

over a route made up of connecting roads for which no joint through rate has been published and filed with the Commission, the lawful rate to be charged is the sum of the established local rates published and filed by the individual roads; or if there is a local rate over one road and a joint rate over the others for the remainder of the route, all published and filed with the Commission, the lawful through rate to be charged is the sum of the local and joint rates.²⁷

§ 402. Relief of Agent does not Relieve Carrier.

Through error an agent inserted a route in a round-trip ticket over which the published fare was \$10 in excess of the amount actually collected from the passenger. Upon request of the carrier for permission to relieve its agent of the uncollected undercharge; *Held*, That the collection of the amount from the agent would not in any way relieve the carrier of its responsibility for failing to collect the full tariff from the passenger.²⁸

§ 403. Refund on account of Full-Fare Transportation used by a Boy under 12 years of age not Permissible.

A purchaser of two full-fare tickets called upon the initial carrier for a refund, after they had been used, on the ground that he had asked for a ticket and a half, and that he had used one of the full-fare tickets for his son, who was under 12 years of age. The agent of the carrier denied that a half-fare ticket had been requested, and the fact appeared that the father had accepted and paid for two full fares: *Held*, That the Commission would not authorize a refund.²⁹

§ 404. Penalty for offering, granting, giving, soliciting, accepting, or Receiving any Rebate from Published Rates or other Concessions.

See *Section 759, post*.

²⁷ C. B. & Q. Ry. Co. v. United States (1907), 157 Fed. Rep. 830, 85 C. C. A. 194, affirmed 209 U. S. 90; on authority of Armour Packing Co. v. United States (1908), 209 U. S. 56, 52 L. ed. 681, 28 Sup. Ct. 428.

²⁸ Rule 151, Con. Rul. Bul. No. 4 (March 1, 1909).

²⁹ Rule 163, Con. Rul. Bul. No. 4 (April 12, 1909).

CHAPTER XXVIII.

DAMAGES AND REPARATION.

SECTION

405. Jurisdiction of Interstate Commerce Commission to Award Reparation for Damages.
406. Act to Regulate Commerce contemplates Pecuniary Reparation.
407. Reparation limited to Damages arising from Violation of the Act.
408. Reparation for Assessment of Charges in Excess of Published Schedule.
409. Reparation for Assessment of Unreasonable Rates.
410. Overcharge account of Excess Weight.
411. Reparation for Damages accruing from Violation of Long-and-Short-Haul Clause.
412. Protest by Shipper or Consignee against Payment of Excessive Freight Charges when Demanded by Carrier not a Necessary Prerequisite to Recovery of Reparation for Damages.
413. Commission will not order Reparation for the Purpose of Equalizing Rates.
414. Establishment of Through Route for Purpose of Awarding Reparation.
415. Claim for Damages cannot be based on an Unlawful Privilege.
416. Refund of Overcharge on Shipment to Adjacent Foreign Country.
417. Refund where there is a Clerical Error in the Tariff Resulting in Higher Rate.
418. Where Rates have been voluntarily reduced Commission will not Award Reparation as a matter of Course.
419. Commission will not order Reparation where its Effect will be to make a Reconsigning Privilege Retroactive.
420. Shipper cannot recover on Contract Rate Different from Published Rate.
421. Damages accruing account Detention of Goods until Published Rate is Paid by Consignee.
422. Where Damages result to the Shipper on account of Failure of the Carrier to Post Rate Schedules.
423. Where Damages result to the Shipper account Failure of Initial Carrier to secure Concurrence of Connecting Line.
424. Liability of Carriers for misrouting Shipments and Reparation therefor.

425. Reparation for Failure of Carrier to perform Expedited Service as Agreed in Consideration of Increased Rate.
426. Reparation for Damages account Unjust Discrimination.
427. Accrued Claims not invalidated by Subsequent Cancellation of Absorption Rule.
428. Damages to Fruit by delayed Notice of Arrival at Destination.
429. Remote or Speculative Damages.
430. A Passenger Wrongfully deprived of Benefit of Return Coupon of a Round-Trip Excursion Ticket May Have Reparation.
431. Responsibility of Carrier for Failure to furnish Proper Cars to Which Rates Apply.
432. Where Freight is unloaded by Carrier's Agent in Depot by Mistake Instead of Switching Car to Consignee's Siding.
433. Liability of Receiving Carrier for Loss or Damage on Interstate Traffic.
434. Assignability of Overcharge Claims.
435. Benefit of Reparation Order extends to All Like Shipments.
436. Delivering Carrier must investigate before paying Claims.
437. Adjustment of Claims on Presentation.
438. Liability of Members of Traffic Association for Unreasonable Rates Charged.
439. Parties entitled to Reparation.
440. Limitation of Actions before the Commission.
441. Parties to Action for Damages.
442. Rules of Procedure before the Commission.
443. Order of Commission awarding Reparation.
444. Change of Rate while Shipment was on the Ocean.
445. Remedy for Wrongs which occurred prior to the Act.
446. Special Reparation on Informal Complaints.
447. Penalty for Shipper obtaining or attempting to obtain Payment for Damages, Allowance or Refund by False Representation.

§ 405. Jurisdiction of Interstate Commerce Commission to Award Reparation for Damages.

¶ A. JURISDICTION IN GENERAL OF COMMISSION TO AWARD DAMAGES.

In the case of *Washer Grain Co. v. M. P. Ry. Co.*,¹ the question was raised as to the jurisdiction of the Interstate Commerce Commission to award damages—what it is and when it should be exercised. The Commission stated that recognizing that the courts must ultimately determine this question they

¹ *Washer Grain Co. v. Mo. Pac. Ry. Co.* (January 6, 1909), 15 I. C. C. R. 147.

were unable to avoid an administrative consideration of the subject and made the following observations:

“Section 8 of the Act is as follows:

“‘That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violations of the provisions of this Act, together with a reasonable counsel or attorney’s fee, to be fixed by the Court in every case of recovery, which attorney’s fee shall be taxed and collected as part of the costs in the case.’

“‘It is probably unnecessary to do more than point out that by the terms of Section 8 the damages therein contemplated and the attorney’s fee provided for can only be recovered in a suit brought in a court for a violation of the Interstate Commerce Act and the amendments thereto.

“Section 9 provides:

“‘That any person or persons claiming to be damaged by any common carrier subject to the provisions of the Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovering of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying,

but such evidence or testimony shall not be used against such person on the trial of any criminal proceedings.'

"The Supreme Court in the *Abilene Case*² has construed the ninth section, and we cannot do better than quote the words of the Court:

" 'In other words, we think that it inevitably follows from the context of the Act that the independent right of an individual originally to maintain actions in courts to obtain pecuniary redress for violations of the Act conferred by the ninth section must be confined to redress of such wrongs as can consistently with the context of the Act be redressed by courts without previous action by the Commission, and therefore does not imply the power in a court to primarily hear complaints concerning wrongs of the character of the one here complained of.'

"Section 10 makes certain acts of the common carrier, its officers or agents, misdemeanors and provides certain penalties therefor, and makes certain analogous acts on the part of shippers misdemeanors, likewise punishable by similar penalties, and adds in its last clause, 'and such person, corporation, or company shall also, together with said common carrier, be liable, jointly and severally, in an action on the case to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.'

"Clearly under Section 10 the Commission, as an administrative body having *quasi*-judicial powers has no authority whatever, as the section is directed solely to court procedure.

"The thirteenth section, which relates specifically to proceedings before the Commission, has these words:

" 'If such common carrier, within the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. * * *

" 'No complaint shall at any time be dismissed because' of the absence of direct damage to the complainant.'

² T. & P. Ry. Co. v. Abilene Cotton Oil Co. (1907), 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, reversing 38 Tex. Civ. App. 366, 85 S. W. 1052.

“The obvious meaning of these latter words is that the Congress, as shown elsewhere throughout the Act, desired to divorce proceedings before the Commission from technicalities that arise very properly in the courts, and to allow complaints to be filed even where there is no direct damage to the complainant in order that the Commission might investigate, and that the public generally might, without burdensome technical restrictions, get the full value of the Commission’s rulings on matters that perhaps to the individual are infinitesimal and indirect, but which are of momentous importance to the public at large.

“Section 14 says in regard to the reports made by the Commission:

“‘In case damages are awarded such report shall include the findings of fact on which the award was made.’

“Section 15 has these words:

“‘All orders of the Commission, except orders for the payment of money, shall take effect in such reasonable time,’ etc.

“Clearly by these Sections 14 and 15 awards of money damages made by the Commission are contemplated.

“Section 16, so far as damages are concerned, is as follows:

“‘That if, after hearing on a complaint made as provided in Section 13 of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act, for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

“‘If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainants * * * may file in the Circuit Court of the United States * * * a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suits the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the Circuit

Court nor for costs in any subsequent stage of the proceedings unless they occur upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as part of the costs of the suit.

* * * In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants * * * In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.'

"The sections quoted above are all that bear directly upon the question of the jurisdiction of the Commission to award money damages in any case.

"The Cullom Act, approved February 4, 1887, was interpreted as giving no authority to the Commission to award damages. In the first annual report of the Commission, dated December 1, 1887, on page 27, the Commission said:

" 'In none of these cases so far decided by the Commission has it felt called upon to order reparation to be made for past injury. Most of the cases were such as to present no case for reparation—they looked only to the establishment of a rule for the future. Some complaints, however, were evidently made in the expectation that the Commission might proceed to give damages upon a grievance that would support an action on the common-law side of the Federal Court. The Commission, when such complaints have been brought to a hearing, has not discovered in the statute a purpose to confer upon it a general power to award damages in the cases of which it may take cognizance. The failure to provide in terms for a judgment and execution is strong negative testimony against such a purpose; but what is perhaps more conclusive is that the Act must be so construed as to harmonize with the Seventh Amendment to the Constitution, which preserves the right of trial by jury in common-law suits.

" 'It is believed to be unquestionable that parties cannot be

deprived of this right through conferring authority to award reparation upon a tribunal that sits without a jury as assistant; and that therefore any determination that reparation should be made in a case in which a suit at law might have been maintained cannot be made absolutely binding and enforceable against the defendant in the form of a judgment; but that under the statute it will put the defendant to election, either to satisfy the complaint, in which case he will be relieved of further liability or penalty, or, on the other hand, to take the risk of proceedings in a Federal court to recover damages or penalty, or both, in which case the finding of the Commission would be *prima facie* evidence of the facts recited in it.'

"Thereupon an amendment was presented to the Congress, which was passed and approved March 2, 1889, and the Act was further amended June 29, 1906. By these amendments, particularly the amendments to Section 16, the Commission now has authority to award money damages in certain cases of claims, and its order for reparation if resisted by the carriers may now be reviewed before a jury in the courts of common law.

"Under Section 16 of the Act as originally enacted, the only proceeding authorized to enforce an order of the Commission was in equity. As the constitutional guarantee of the right to trial by jury attaches to an order for mere pecuniary reparation, and it was not provided that the findings of the Commission should be received as *prima facie* evidence in an action at law, an order for reparation, if not a nullity, was at least ineffective. It was consequently the uniform practice of the Commission to decline to order or recommend reparation. By the Act of March 2, 1889, the original Act was so amended as to provide for trial by jury in proceedings to enforce an order for reparation, and the findings of the Commission were given the force of *prima facie* evidence in such proceedings.³

³ *Macloon v. C. N. & W. Ry. Co.* (1892), 5 I. C. C. R. 84, 3 I. C. R. 711; *W. N. Y. & P. R. Co. v. Penn. Refining Co.* (1905), 137 Fed. Rep. 343; 70 C. C. A. 23, affirmed *Penn. Refining Co. Ltd. v. W. N. Y. & P. R. Co.* (1908), 208 U. S. 208; 52 L. ed. 456, 28 Sup. Ct. 268.

“At no time have costs been assessed by the Commission; at no time have attorneys’ fees been allowed to the successful parties; at no time has any order or rule of the Commission for the payment had the effect of an order, decree, or judgment of a Court; at no time has an order of the Commission for the payment of money been enforceable by process or been regarded as a lien upon the property of the defendant. The Commission is solely a creation of the Act and the Act has not given any such power or efficacy to its procedure or orders.

“Under the Act to Regulate Commerce as amended, particularly under the sixteenth section, providing for a trial *de novo* before a Court and jury wherever carriers refuse to obey an order of the Commission for the payment of money and making at such trial the findings and order of the Commission *prima facie* evidence of the facts therein stated, we are of the opinion that the Commission has jurisdiction, without regard to the amount in controversy, to award damages whenever they arise under the Act except in those cases where the Act itself names another forum.

“While the Commission, in our opinion, has power or jurisdiction to award damages without regard to whether such damages exceed \$20 or not, the defendant’s constitutional right of a trial by jury being preserved, the Commission has no jurisdiction or power to award damages at all unless such damages shall have arisen strictly as pointed out in the Act. Nor does the jurisdiction or power of the Commission to award damages extend to or embrace all damages pointed out in the Act, for by the Act itself certain damages, after the criminal jurisdiction of the Courts has been invoked, can only be recovered in an action on the case in a Court of the United States of competent jurisdiction. (*Sec. 10 of the Act, supra.*)

“The leading case of the jurisdiction of the Commission to award damages is *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*,⁴ decided February 25, 1907, by the Supreme Court of the United States. In that case the Court held: ‘That the

⁴ See note 2, *supra*.

Act to Regulate Commerce was intended to afford effective means for redressing the wrongs resulting from unjust discrimination and undue preference is undoubted. * * * And it is apparent that the means by which these great purposes were to be accomplished was the placing upon all rates which should have a uniform application to all and which should not be departed from so long as the established schedule remained unaltered in the manner provided by law * * *.

“ ‘When a general scope of the Act is enlightened by the considerations just stated it becomes manifest that there is not only a relation, but an indissoluble unity between the provision for the establishment and maintenance of rates until corrected in accordance with the statute and the prohibitions against preferences and discrimination. * * * .

“ ‘Indeed, no reason can be perceived for the enactment of the provision endowing the administrative tribunal, which the Act created with power, on due proof, not only to award reparation to a particular shipper, but to command the carrier to desist from violation of the Act in the future, thus compelling the alteration of the old or the filing of a new schedule, conformably to the action of the Commission, if the power was left in the Courts to grant relief on complaint of any shipper, upon the theory that the established rate could be disregarded and be treated as unreasonable, without reference to a previous action by the Commission in the premises. This must be because if the power existed in both Courts and the Commission to originally hear complaints on this subject there might be a divergence between the action of the Commission and the decision of a Court. In other words, the established schedule might be found reasonable by the Commission in the first instance and unreasonable by a Court acting originally, and thus a conflict would arise which would render the enforcement of the Act impossible * * * .

“ ‘A shipper seeking reparation predicated upon the reasonableness of an established rate must, under the Act to Regulate Commerce, primarily invoke redress through the Interstate Commerce Commission, which body alone is vested with power originally to entertain proceedings for the alteration of an

established schedule, because the rates fixed therein are unreasonable.'

"While the *Abilene Case*, *supra*, settles the primary jurisdiction of the Commission to determine the reasonableness or unreasonableness of an established rate and to award reparation predicated upon the unreasonableness of an established rate, we believe that our jurisdiction is also primary in matters of unjust discrimination, undue or unreasonable preference or advantage, undue or unreasonable prejudice or disadvantage, and generally whenever the Commission may order the carrier to cease and desist from violations of the Act. As we said in the case of the *Railroad Commission of Ohio et al. v. Hocking Valley Ry. Co.*⁵

"Every reason advanced by the Supreme Court in support of the conclusion that the lower court had not original jurisdiction in rate matters appears to apply with equal force to our view that the Commission has original jurisdiction of questions of discriminatory practices prohibited by the Act to Regulate Commerce.'

"Many matters that appear to involve discrimination only do affect and involve the rates and charges paid by the shipper. If, therefore, the Commission has jurisdiction primarily to consider questions of unjust discrimination, undue or unreasonable preference or advantage to persons, localities, or particular descriptions of traffic, etc., it would seem also to have jurisdiction to award reparation or damages in connection therewith when properly proved."

However, in the case of *Joynes v. Pennsylvania Railroad Co.*,^{5a} which was decided about six months after the *Washer Grain Co. case*, *supra*, the Commission, with three of its members dissenting, disclaimed any authority to award general damages and held that its power to award damages was limited to what was termed transportation or rate damages. In that case the

⁵ *Railroad Commission of Ohio v. Hocking Valley Ry. Co.*, 12 I. C. C. R. 398.

^{5a} *Joynes v. Pennsylvania Rd. Co.* (June 29, 1909), 17 I. C. C. R. 361; see important decision by Judge McPherson in *Morrisdale Coal Co. v. P. R. R. Co.* (1910), 176 Fed. Rep. 748.

petitioner, a dealer in fruits and general produce, charged discrimination, in that the defendant persistently delayed his shipments of fruit in Pittsburg at the Fifty-fourth Street yards where the cars were not accessible to teams and could not be unloaded by him, while at the same time cars of other shippers were promptly placed in position at the unloading platform and were thus given a preferred use of the defendant's terminal facilities, and that by reason of said delay and discrimination petitioner suffered loss through the decay of the fruit and otherwise in the sum of \$30,497.70, for which amount he claimed reparation. The complaint was accordingly dismissed for want of jurisdiction. This decision is at direct variance with the decision in the *Washer Grain Co. case*, and it certainly appears that the Commission is unnecessarily limiting its jurisdiction in view of the broad provisions contained in the statute. The writer is therefore constrained to here reproduce the dissenting opinion in the *Joynes case*, which seems to be more consonant with the terms and spirit of the statute.

Lane, *Commissioner*, in dissenting stated:

"The decision of the majority is, as I view it, a surrender of jurisdiction clearly conferred, and thus far exercised without challenge. It is conceded that the facts alleged in this complaint would, if found true, constitute such undue discrimination as is forbidden by the act. It is further admitted that the Commission has authority to order the carrier to cease and desist from such discrimination in the future. But the power to redress the past injury by an award of reparation is denied. I can not concur in this conclusion, and shall endeavor to state, as briefly as I may, the reasons for my dissent.

"Section 3 of the act contains a sweeping prohibition against 'any undue or unreasonable prejudice or disadvantage in any respect whatever.' This is broad enough to cover every form of discrimination. The statute would be peculiarly defective if a carrier could with impunity subject a shipper to all manner of discrimination in the delivery of his perishable freight. I can conceive of no form of discrimination which would be more disastrous to a shipper than persistent delay in delivering his perishable freight, while like shipments of

his competitors are placed promptly upon arrival at destination. Beyond all doubt section 3 applies to just such discrimination as is alleged in this proceeding. The case of *United States ex rel. Morris & Co. v. D., L. & W. R. R. Co.*, 40 Fed. Rep., 101, is conclusive upon this point. The court says (p. 103):

The latter (section 3) is comprehensive enough, standing alone, to include every form of unjust discrimination, not only in rates, but also in the conveniences and facilities supplied to shippers in any of the details of the carrying service, and such is the judicial construction in England of the term 'undue or unreasonable preference or advantage,' as used in the English 'Railway and canal traffic act' (17 & 18 Vict., c. 31, sec. 2).

"The jurisdiction of the Commission is coextensive with the mandates and prohibitions of the act. Section 3 has not been changed by the Hepburn law, and sections 8 and 9 have likewise been retained in their entirety. Section 15 has been superseded, but the powers which it conferred are more than covered by sections 15 and 16 of the amended law. The law clearly contemplates that a shipper who has been the victim of discriminatory practices on the part of a carrier shall have a twofold remedy before this Commission: (1) An order upon the carrier to cease and desist from the unlawful practices in the future. (2) Redress for the past injury by an award of reparation. By the decision of the Commission herein, the second of these remedies is read out of the law. The case of *T. & P. Ry. Co. v. Abilene Cotton Oil Co.*, 204 U. S., 426, is cited, but in my judgment that case is in no respect a precedent for the action now taken. Conceding that the Supreme Court found it necessary to read certain language out of the act in order to reach its decision in the *Abilene case*, that course was necessary in order to give consistency and vitality to the law. It is only too apparent, as the court says, that if the federal courts as well as the Commission were to entertain, in the first instance, complaints predicated upon the unreasonableness of established rates, conflicting decisions would inevitably ensue. We owe much to the Supreme Court for this broad construction of the law. It is clear that a contrary decision would have led to infinite mis-

chief. But it is hardly necessary to point out that no possible conflict could arise from the concurrent authority of the Commission and the courts to award damages for unlawful discrimination in furnishing facilities of transportation. The cases are in no respect parallel. The following comprehensive statement of the Commission's powers is found in the opinion of the court in the *Abilene case*:

Power was conferred upon the Commission to hear complaints concerning violations of the act, to investigate the same, and, if the complaint were well founded, to direct not only the making of reparation to injured persons, but to order the carrier to desist from such violation in the future. * * * That the act to regulate commerce was intended to afford an effective means for redressing wrongs resulting from unjust discrimination and undue preference is undoubted. Indeed, it is not open to controversy that to provide for these subjects was among the principal purposes of the act.

"This would seem to be a definite recognition of our authority to award damages for any violation of the act.

"In numerous cases the Commission has asserted its power to award damages for discrimination in furnishing facilities for transportation and in effecting delivery of freight. One of the earliest of these is the case of *Macloon v. C. & N. W. Ry. Co.*, 5 I. C. C. Rep., 84. The defendant had refused to switch cars from its tracks to the tracks upon which the complainant's plant was located unless he promised in advance to pay any demurrage charges which might be assessed, regardless of their legality. This switching service was performed for other shippers without exacting any such promise. It was held that the case came under the prohibition of the third section, which forbids the subjection of any person to any undue or unreasonable prejudice or disadvantage in any respect whatever. It was held, further, that the plaintiff was entitled to reparation, but, the proof of damages being insufficient, the case was held open pending notice of adjustment by the parties themselves.

"In *Eaton v. C., H. & D. Ry. Co.*, 11 I. C. C. Rep., 619, the Commission found that the defendant had subjected the complainant to unjust discrimination in furnishing cars for shipment of hay and grain. Reparation was awarded in the

amount of \$200, the business loss which complainant had suffered by reason of the discrimination.

"In *Rogers & Co. v. P. & R. Ry. Co.*, 12 I. C. C. Rep., 308, it appeared that the defendant had declared an embargo on complainant's shipments of hay and straw. Pursuant to this embargo, seven cars of hay consigned to complainant were refused delivery, and the loss on these shipments, due principally to a falling market, was \$190.70. The Commission held that, on proper showing that the shipments were interstate in character, reparation would be awarded in the amount named.

"In *Eichenberg v. S. P. Co.*, 14 I. C. C. Rep., 250, the Commission condemned as unlawful certain discriminations in the furnishing of terminal facilities at Galveston, Tex., the case being held open for further evidence, looking to an award of reparation.

"In the case of the *Glade Coal Co. v. B. & O. R. R. Co.*, 10 I. C. C. Rep., 226, and *Paxton Tie Co. v. D. S. R. R. Co.*, 10 I. C. C. Rep., 422, reparation was awarded for damages resulting from discrimination in the furnishing of cars. (See also *Phelps & Co. v. T. & P. Ry. Co.*, 6 I. C. C. Rep., 36; *American Warehousemen's Asso. v. I. C. R. R. Co.*, 7 I. C. C. Rep., 556; *St. Louis Hay & Grain Co. v. C., B. & Q. R. R. Co.*, 11 I. C. C. Rep., 83; *Miner v. N. Y., N. H. & H. R. R. Co.*, 11 I. C. C. Rep., 422.)

"It is suggested that comparatively few complaints involving damages of the character in question have been filed with the Commission, but manifestly this has no bearing upon the scope of the authority which the statute confers. It is urged that the exercise of the power to award reparation in such cases would greatly multiply proceedings before the Commission, but this, I again submit, does not justify a disclaimer of jurisdiction. The difficulty of estimating damages is likewise without persuasive force.

"I can not agree with the holding of the majority that the act 'gives us a reasonable discretion in entertaining and refusing to entertain complaints that are presented to us.' It is my understanding that whenever a complaint is filed pre-

senting a violation of the act, this Commission can not decline to take jurisdiction. In any event, a shipper whose business had been ruined by railroad discrimination would find it difficult to understand why the Commission, in the exercise of its discretion, should yield up a part of its salutary power and render itself impotent to redress his wrongs."

Commissioners Clements and Prouty united in the dissent.

The author is of the opinion that the entire question at issue resolves itself into a connected reading of the various provisions of the statute.

Section 3 of the Act, which forbids any undue or unreasonable preference or advantage, reads as follows:

That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Section 8 of the Act establishes the liability of common carriers for damages accruing from violation of the Act, and reads as follows:

That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount sustained in consequence of any such violation of the provisions of this Act together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Section 9 of the Act gives the shipper a right of action before the Commission, for violations of that statute, which reads:

That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act *may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case*

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elect which one of the two methods of procedure herein provided for he or they will adopt.

The words, "*as hereinafter provided for,*" which appear in Section 9 refer to the manner of making complaints to the Commission, which procedure is provided for in Section 13 of the Act. Section 13 is given following with the new matter that was added by the amendment of June 18, 1910, shown in italic:

That any person, firm, corporation, or *company*, or association, or any mercantile, agricultural, or manufacturing society or *other organization*, or any body politic or municipal corporation, or any *common carrier*, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the *complaint* thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, *the common carrier* shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall, in like manner *and with the same authority and powers*, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, *and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.*

Section 16 of the Act gives the Commission the authority to award the damages claimed under Section 13 and also provides the method for the enforcement of such awards. This section reads as follows:

That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act, for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States, for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, *or in any State court of general jurisdiction having jurisdiction of the parties*, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit *in the circuit court of the United States* shall proceed in all respects like all other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition, for the enforcement of an order for the payment of money, shall be filed in the circuit court *or State court* within one year from the date of the order, and not after.

In such suits all parties in whose favor the Commission may have made an award of damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

¶ B. JURISDICTION OF COMMISSION OVER CLAIMS FOR LOSS OF PROFIT CAUSED BY TARDY DELIVERY OF PROPERTY; ALSO LOSS OF AND DAMAGE TO PROPERTY IN TRANSIT.

Because of the failure of an express company to make prompt delivery of a carload of fruit at the unloading station designated by the shippers, the latter were unable to take advantage of a high market but were compelled later to sell at lower prices; for the loss thus sustained they filed a complaint

with the Interstate Commerce Commission demanding reparation.⁶

The Commission in dismissing the action said: "Is it competent for the Commission to act upon a complaint of this nature and to award damages of this character? We have not so understood our authority under the amended Act to Regulate Commerce. The general purpose of the Act, as is fully revealed in its first five sections, was to secure just and reasonable rates; to prohibit unjust and discriminatory rates in the performance by carriers of like services under similar conditions and circumstances; to prevent undue and unreasonable preferences; to forbid a higher charge for shorter than for a longer haul in the same direction, the shorter being contained within the longer haul; and to render unlawful all combinations among carriers for the pooling of freights. In a word, as a regulative measure the Act confers upon the Commission power and authority to enter only with respect to the rates and practices of carriers, and that this was its general object appears no less clearly from an analysis of the statute itself than from the public discussion that accompanied its enactment. It was not intended by the Congress that the Commission should supplant and take the place of the Courts with respect to that large class of complaints that may arise out of the failure of carriers to carry out their contracts of transportation promptly and safely, and properly to perform their duties as common carriers in the handling of shipments entrusted to them for carriage from one point to another. As to all such claims, as we have had occasion frequently to say in connection with informal complaints of this character, the Commission is without authority to afford redress. It is true that the Act authorizes the Commission, after full hearing and upon complaint made, to award damages, but it is careful to restrict that authority to cases in which the carrier may be liable under the provisions of the Act. The express language of Section 8 is that

⁶ *Blume & Co. v. Wells, Fargo & Co.* (1909), 15 I. C. C. R. 53, cited in *Carstens Packing Co. v. Oregon Railroad & Nav. Co. et al.*, 17 I. C. C. R. 125 (1909).

in the case of the commission or omission by the carrier of any matter or thing prohibited or required by the Act, 'such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act.' In Section 9 the provision is that the person injured 'may bring suit * * * for the recovery of that damage for which such common carrier may be liable under the provisions of this Act.' In Section 16 the Commission is authorized to make an award of damages whenever, after hearing and upon complaint made, it shall find that the party complainant 'is entitled to an award of damages under the provisions of this Act for violation thereof.' It is a violation of the provisions of the Act for a common carrier to demand and collect an unlawful or discriminatory rate, and of complaints based upon such violations the Commission has full jurisdiction and may afford redress by establishing reasonable rates to govern future shipments and awarding reparation with respect to past shipments. The Commission may also require carriers to desist from unlawful preferences and otherwise regulate the rates and practices of carriers but with respect to the performance by carriers for the shipping public of their general duties as common carriers other than those covered by the Act, the Commission is wholly without authority. Breaches of duty in that respect, such as the loss of or damage of property in transit, the failure to make delivery safely and with reasonable dispatch in accordance with the contract, express or implied, which a carrier enters into when accepting a shipment for carriage, are matters that are solely within the jurisdiction of the Courts."

The remedy of a party for injury to goods shipped resulting from delay, detention, loss, breakage, rotting or other deterioration or damage, *not attributable to a violation of any provisions of the Act to Regulate Commerce*, is by appropriate action in the Courts.⁷

⁷ *Blanton Duncan v. A. T. & S. F. Ry. Co. et al.* (1893), 6 I. C. R. 85, 4 I. C. R. 385, predicated on *Loud v. S. C. Ry. Co.*, 4 I. C. R. 205.

¶ C. JURISDICTION OF COMMISSION TO AWARD REPARATION FOR DAMAGES ACCRUING ON SHIPMENTS THAT MOVED UNDER PUBLISHED TARIFF RATES THAT WERE SUBSEQUENTLY DECLARED TO BE UNJUST AND UNREASONABLE.

In the case of *Arkansas Fuel Co. v. C., M. & St. P. Ry. Co.*,⁸ the defendant asserted that the only power which the Commission had to modify or change a published rate is that conferred under Section 15 of the Act, the specific terms of which, as the defendant contended, limits its authority to the establishment of reasonable rates for the future, and does not authorize the Commission to change a rate upon which a shipment has already moved.

In *Poor Grain Co. v. C., B. & Q. R. R. Co.*,⁹ the Commission said that "a rate may be lawful in the sense that it is the regularly published rate and therefore the only rate under which traffic may lawfully move, and yet at the same time be unlawful in the sense that it is excessive and unreasonable in amount. Its lawfulness as the published rate is to be tested by the mere inspection of the schedules on file with the Commission; and if found to have been published in conformity with the requirements of law that rate must in all cases be charged and actually collected by the carrier even though it may be excessive. Whether or not it is unlawful in the sense of being excessive depends upon all the circumstances and conditions that are recognized as having a legitimate influence in rate making.

And in *Coomes v. C., M. & St. P. Ry. Co.*,¹⁰ the Commission said:

"Although a rate is by the terms of the law binding upon all so long as it remains in effect, such rate may, nevertheless, upon proper procedure, be found and declared to be unlawful

⁸ *Arkansas Fuel Co. v. C. M. & St. P. Ry. Co.* (1909), 16 I. C. C. R. 95; see also *Allen & C. M. & St. P. Ry. Co.*, 16 I. C. C. 293; *Flint & Walling Mfg. Co. v. L. S. & M. S. Ry. Co. et al.* (1908), 14 I. C. C. R. 336; *Kansas City Hay Co. v. C. M. & St. P. Ry. Co.* (1909), 16 I. C. C. R. 100.

⁹ *Poor Grain Co. v. C. B. & Q. R. R. Co.* (1907), 12 I. C. C. R. 418.

¹⁰ *Coomes v. C. M. & St. P. Ry. Co.*, 13 I. C. C. R. 192; *Nicola, Stone & Meyers Co. v. L. & N. R. R. Co. et al.*, 14 I. C. C. R. 199.

in that it is unreasonably high or unduly discriminatory, and become in respect to shipments made while the unjust rate was in effect the basis of an award in damages. To hold otherwise would be to make the mere establishment of rates by a carrier conclusive of their reasonableness and justness while in effect * * * .

“While the establishment of rates by the carrier in the manner required by law fixes the standard of lawful rates for the time being and so long as such established rates are in effect, this standard is by no means conclusive of their reasonableness and justness.”

But the defendant insisted that this view of a rate established by the carrier in the manner prescribed by law is illogical; that if the rate was lawful when paid by the shipper it must be held and considered to be a lawful rate for all purposes so far as shipments in the past are concerned; that it is a contradiction of terms to say that the published rate is the legal rate and to hold at the same time that it may be treated as an unreasonable and unjust and therefore unlawful rate; and that so long as it remains the legal rate, that is to say, until it is voluntarily changed or ordered by the Commission to be changed, the payment of the published rate cannot lawfully be made the basis of a subsequent claim for damages with respect to a shipment that moved under it.

The Commission said:¹¹ “We have not been able to take that view of the matter. It has been said that the word ‘legal’ looks more to the letter and ‘lawful’ to the spirit of the law; that ‘legal’ imports rather that the forms of law are observed and the rules prescribed obeyed, and the word ‘lawful’ that the act is rightful in substance. The two words may aptly be used as illustrative of the distinction that we have attempted to draw in the cases cited. It is provided in Section 6 of the Act that no carrier shall collect or receive a greater or less compensation than the rates specified in the tariff in effect at the time of the movement. Other provisions of law make it a misdemeanor for the carrier to depart from the published

¹¹ See note 8, *supra*.

rate. In dealing with shippers the carrier is therefore required to conform the freight charges actually collected to the amount fixed in its published tariffs. In that sense the published rate in effect at the time of the movement is therefore the legal rate. It is what the letter of the law requires the shipper to pay and the carrier to collect. But the first section of the Act, following the rule of the common law, declares that all charges for services rendered by a carrier in the transportation of passengers or property shall be reasonable and just. It also declares every unjust and unreasonable charge for such a service to be unlawful.

“In publishing a rate or a schedule of rates, the carrier therefore acts under this admonition of the statute. If it promulgates a rate in violation of this injunction, that is to say, if it establishes a rate that is excessive and therefore unjust and unreasonable, it is not a lawful rate when its reasonableness is subsequently questioned upon complaint filed. While it may be, and indeed is, the legal rate—the rate that must be paid by the shipper and collected by the carrier because it is the published rate—the mere publication cannot make a rate lawful that is unreasonable and excessive. No rate can be lawful, in the sense of being immune from attack, either with respect to past or future shipments, if it be excessive and unreasonable in amount.

“The Commission has therefore held that the Act not only gives a remedy against excessive and unreasonable rates as applied to shipments to be made in the future, but also affords the shipper a means of recovering excessive charges on shipments made by him in the past under rates that were unjust and unreasonable. A careful reading of the Act, and particularly of Sections 8, 9, 13, 14, and 16, seems to leave no doubt that the Commission upon complaint made and hearing had, may award damages on past shipments if the proof shows to its satisfaction that the rates under which the shipments moved were excessive and unreasonable, for the law declares every unjust and unreasonable charge to be unlawful.

“The Commission also has authority to measure the shipper's damages upon the basis of such lower rate as it may find from

the evidence would have been a reasonable and just charge for the service rendered. The sections referred to not only give the Commission a procedure for trying such issues, but afford to shippers a process in the Courts for enforcing any such order of the Commission."

The question of the authority of the Commission to order reparation in such cases seems to be settled conclusively in *Texas & Pacific Ry. Co. v. Abilene Cotton Oil Co.*,¹² in which the Supreme Court of the United States said: "Although an established schedule of rates may have been altered by a carrier voluntarily or as the result of the enforcement of an order of the Commission to desist from violating the law, rendered in accordance with the provisions of the statute, it may not be doubted that the power of the Commission would nevertheless extend to hearing legal complaints of and awarding reparation to individuals for wrongs unlawfully suffered from the application of the unreasonable schedule during the period when such schedule was in force."

The exercise of such authority is but the enforcement of that equality which the statute commands.¹³

When the Commission has determined that the rates contained in an established schedule are unreasonable, it has the power not only to award reparation, but to command the carrier to desist from violation of the Act in the future, thus compelling the alteration of the old, or the filing of a new schedule of rates.¹⁴

¶ D. AUTHORITY OF COMMISSION TO AWARD REPARATION IN A CASE INVOLVING COLLECTION OF A RATE HIGHER THAN THAT NAMED IN THE PUBLISHED TARIFF.

In *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.*,¹⁵ the Commission, per Knapp, *Chairman*, stated, "Whether the Commission has authority to award damages in a case where

¹² See note 2, *supra*.

¹³ *Ibid*.

¹⁴ *Ibid*.

¹⁵ *Laning-Harris Coal & Grain Co. v. St. L. & S. F. R. R. Co.* (1909), 15 I. C. C. R. 37.

a carrier collects a greater sum on an interstate shipment than is fixed by its published tariffs, or whether the shipper must seek his remedy in the Courts, presents a question somewhat more difficult. But upon consideration of the various provisions of the Act, it is believed that the question should be resolved in favor of the Commission's authority to make such an order. The Commission is authorized to award reparation to any person or persons found to be damaged by any common carrier subject to the provisions of the Act, for a violation thereof. One of the leading prohibitions of the Act is that against the exaction of an unreasonable rate, and it is well settled that the Commission has authority to award reparation in case of the exaction of an unreasonable rate. As against the carrier its published tariff rate is conclusive of the fact that any higher rate is unreasonable. It seems fairly certain that in cases of the exaction of a rate higher than the published tariff the shipper may bring his suit in Court in the first instance, but the Act also appears to give the Commission and the Courts concurrent jurisdiction in this respect."

¶ E. PRIMARY JURISDICTION OF THE COMMISSION OVER ACTIONS FOR REPARATION PREDICATED UPON THE REASONABLENESS OF AN ESTABLISHED RATE.

A shipper cannot maintain an action against a common carrier to obtain relief from an alleged unreasonable freight rate exacted from him for an interstate shipment, without reference to any previous action by the Interstate Commerce Commission where such rate has been filed with that commission and promulgated as provided by the Act to Regulate Commerce, and is the rate which it is the duty of the carrier, under that Act, to enforce against shippers until changed in accordance with the provisions of that statute, since the independent right of an individual originally to maintain actions to obtain pecuniary redress for violations of the Act, conferred by Section 9 must be confined to such wrongs as can consistently with the context of the Act, be redressed without previous action by the Commission; and the provisions of Section 22, that nothing therein "shall in any way abridge or alter the

remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies," cannot be construed as continuing in shippers a common-law right the continued existence of which would be absolutely inconsistent with the provisions of the statute.¹⁶

The Court said: "While repeals by implication are not favored and a statute will not be construed as abrogating an existing common-law remedy, it will be so construed if such preexisting right is so repugnant to it as to deprive it of its efficacy and render its provisions nugatory."¹⁷

¶ F. JURISDICTION OF COMMISSION TO AWARD REPARATION
FOR MISROUTING TRAFFIC.

In the case of *Woodward & Dickerson v. L. & N. Rd. Co. et al.*,¹⁸ the complainant shipped two carloads of crude phosphate rock from St. Blaise, Tenn., to Riddlesburg, Pa., but instead of the shipments going over the route directed at the published rate of \$3.45 per gross ton, they were diverted at Cincinnati by the initial carrier to another route over which the \$3.45 rate did not apply. Upon complaint the Commission awarded shippers damages for the excess charges caused by such misrouting. Upon motion of the defendants to dismiss the case upon the ground that the Interstate Commerce Commission was without jurisdiction to award damages for the diversion of a shipment from a route prescribed by the consignor, the Commission said:

"There is but one theory upon which such jurisdiction may be upheld, namely, that by such diversion some provision of the Act to Regulate Commerce has been violated, as the power of the Commission to award damages is limited to such cases as arise out of violation of the Act. Wherein, therefore,

¹⁶ *T. & P. Ry. Co. v. Abilene Cotton Oil Co.* (1907), 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, reversing 38 Tex. Civ. App. 366; 85 S. W. 1052; cited in *Southern Ry. Co. v. Tift* (1907), 206 U. S. 428, 51 L. ed. 1124, 27 Sup. Ct. 709.

¹⁷ *Ibid.*

¹⁸ *Woodward & Dickerson v. L. & N. R. R. Co.* (1909), 15 I. C. C. R. 170, sustained by Judge Hollister of United States Circuit Court for the Sixth Circuit in *Woodward & Dickerson v. L. & N. R. R. Co.* (1910).

does the law provide that carriers who accept shipments must carry them via any specific route and be responsible for damages in the event of failure so to do? It may be flatly stated that no such mandate is to be found in the law; nevertheless, we think it clearly and necessarily arises from the provision that carriers may make such joint rates and publish same, together with all privileges extended, and 'any rules or regulations which in anywise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee.'¹⁹

"The L. & N. made a joint arrangement with other carriers for the transportation of phosphate rock from St. Blaise, Tenn., to Riddlesburg, Pa., and published that rate as its rate. The rate was a unit and the route was a unit. In its tariff the Louisville & Nashville Railroad did not reserve the right of diversion to any other route over which a higher rate would necessarily and legally be applicable. To be sure a provision in its bill of lading attempted to do this, but such provision being outside its tariff announcement was in no sense a limitation upon the right of the shipper to have his commodity transported in the manner and at the rate specified in the rate schedule."²⁰

"It is no longer strictly correct to speak of the contract of shipment and the bill of lading as evidencing the terms of such contract, for under a governmental-prescribed system of publishing rates a carrier is not free to contract with respect to the rate, but is required by law to perform a service for the public under the tariffs of charges and regulations which, though furnished by it, are legally enforceable, not by reason of any contract, but by virtue of the legal prescription. To say, therefore, that a carrier in diverting a shipment from a route which it has made under sanction of the law is only liable for breach of contract, and that in a court of law, is

¹⁹ It should be noted that the amendment of June 18, 1910, gives the shipper the right to route his freight and makes it obligatory upon the carriers to observe such routing.

²⁰ B. & O. R. R. v. Hamburger (1907), 155 Fed. Rep. 849.

to gravely misconstrue the purport of the Act to Regulate Commerce. This statute commands that carriers shall provide for certain transportation and shall make public the rates applicable thereto, and that the carrier who omits to do what is required to be done shall be liable to the person injured for the full amount of the damages sustained. The Louisville & Nashville Railroad failed to furnish the transportation it held itself out to give at the rate which it announced, and for this failure the shipper is entitled to the damage which he suffered, the difference between the amounts imposed by the carriers upon the shipments made and the legally published joint rate which would have been applied had the shipments moved over the through route established by the Louisville & Nashville and its connections.”

The Commission intervenes in misrouting cases only when, as the result of the failure to obey the shipper's routing instructions, or as a result, without such instructions, of moving a shipment over a route carrying a higher rate than the rate in effect over another route reasonably available, additional transportation charges accrue.²¹

¶ G. SHRINKAGE OF CATTLE IN TRANSIT.

The Commission is without authority to award reparation for shrinkage in weight of cattle while in transit due to delay of carrier. The remedy for such injury is by appropriate action in the courts.²²

¶ H. REPARATION ON INTRASTATE TRAFFIC.

The Commission has no authority to award reparation on shipments that moved wholly between two points in the same State.²³

Complainant shipped three carloads of canned peaches from

²¹ Larrowe Milling Co. v. C. & N. W. Ry. Co. et al. (1910), 17 I. C. C. R. 443.

²² Carstens Pkg. Co. v. O. R. R. & N. Co. (1909), 17 I. C. C. R. 125, predicated on Duncan v. A. T. & S. F. Ry. Co. et al. (1893), 3 I. C. R. 256; 4 I. C. R. 385, 6 I. C. C. R. 85.

²³ Rogers & Co. v. P. & R. Ry. Co. (1907), 12 I. C. C. R. 309.

Oakhurst, Ga., to Marietta, Ga., and from thence rebilled one car to Lexington, Ky., and two cars to Cincinnati, Ohio. Shipper claimed the benefit of the lower through rates from Oakhurst to the rebilled destination and asked reparation. The Commission denied the claim inasmuch as the movement from Oakhurst to Marietta was an intrastate movement.^{23a}

¶ I. ACTION FOR TRESPASS.

The Commission has no authority to consider a claim in the nature of an action of trespass.²⁴

¶ J. JURISDICTION OF COMMISSION TO AWARD REPARATION FOR OVERCHARGE DUE TO ERROR IN WEIGHING.

The Commission has authority to award reparation for unjust charges on shipments due to error in weighing.²⁵

¶ K. JURISDICTION OF COMMISSION TO AWARD REPARATION FOR DAMAGES RESULTING FROM DISCRIMINATION IN FURNISHING TRANSPORTATION FACILITIES.

The Commission has authority to award reparation for damages directly and proximately resulting from unjust discrimination in furnishing transportation facilities to shippers.²⁶

Where an alleged unlawful discrimination in the distribution of coal cars in violation of Interstate Commerce Act, had been practiced by defendant railroad company, resulting in injury to plaintiff, for which it was entitled to damages, such discrimination having been applicable to a class of shippers and not to complainant alone, the Interstate Commerce Com-

^{23a} Dobbs v. L. & N. Rd. Co. (1910), 18 I. C. C. R. 210, citing Gulf, C. & S. F. Ry. Co. v. Texas, 204 U. S. 403.

²⁴ Council v. W. & A. Rd. Co. (1887), 1 I. C. C. R. 339; 1 I. C. R. 638.

²⁵ Leonard v. M. K. & T. Ry. Co. et al. (1907), 12 I. C. C. R. 538.

²⁶ Rogers & Co. v. P. & R. Ry. Co. (1907), 12 I. C. C. R. 308; Eaton v. C. H. & D. R. Co. (1906), 11 I. C. C. R. 619; Gallogly & Firestone v. C. H. & D. R. Co. (1905), 11 I. C. C. R. 1; Paxton Tie Co. v. Det. Southern R. Co. (1904), 10 I. C. C. R. 422; Glade Coal Co. v. B. & O. R. Co. (1904), 10 I. C. C. R. 226.

mission had exclusive original jurisdiction to afford complainant relief, it not being entitled to sue in the first instance in an action for alleged damages sustained thereby, authorized by Section 9 of the Act, and this, though the acts constituting the alleged discrimination had ceased prior to the commencement of the suit.^{26a}

¶ L. AUTHORITY OF THE COMMISSION TO AWARD SET-OFF.

It is obvious that the Commission has no authority to award set-off. The Commission is not empowered to make an order requiring the complainant to pay money damages to a railroad company; it has no general common law or equity jurisdiction, but only such authority as is prescribed in the Act to Regulate Commerce. Generally speaking, the right to award set-off in an action at law is created by the statute to avoid multiplicity of suits, but the right to make such award necessarily involves authority in the court to adjudicate the claims of both parties. It is clear that the Commission, whose authority is in the nature of an extraordinary remedy, is not authorized to adjudicate the claim of a railroad company against a shipper, but only the claims of a shipper against a railroad company for violation of the interstate commerce law. To award set-off amounts to the same thing as adjudicating the claim of a railroad company against the shipper, and entry of an order based upon set-off could occur only after such adjudication. Plainly, if the Commission is without authority to determine the rights of the parties, it is also powerless to enter an order based upon a determination of these rights.²⁷

For example, on one shipment by the complainant the defendant collected more than the lawful rate. On another shipment, it collected a less sum than that to which it was entitled. *Held*, That the Commission was without authority to offset the claims.²⁸

^{26a} *Morrisdale Coal Co. v. Penna Rd. Co.* (1910), 176 Fed. Rep. 748.

²⁷ See note 15, *supra*.

²⁸ *Pitts & Sons v. St. L. & S. F. Rd. Co. et al.* (1905), 10 I. C. C. R. 684.

¶ M. ABATEMENT OF JURISDICTION OF COMMISSION WHEN A
TERRITORY IS ADMITTED AS A STATE.

Reparation asked on account of alleged unreasonable freight rates charged on shipments of cross-ties moving between April 25 and August 12, 1907, from Barnett, Ind. T., to Mc-Alester, Ind. T. Subsequent to the movement of these shipments and the filing of the petition the Territory was admitted as a State into the Union and the points of origin and destination are now located in the State of Oklahoma. By the Act of Congress admitting Oklahoma to statehood the intra-territorial jurisdiction of the Commission ceased to apply to territory now embraced in that State. The Commission can make no lawful order in any case of which it has no jurisdiction under the provisions of the Act to Regulate Commerce. Complaint was dismissed for want of jurisdiction. Motion for rehearing denied.²⁹

¶ N. JURISDICTION OF COMMISSION OVER BREACH OF CONTRACT.

The Commission has no power either to enforce the specific performance of contractual obligations or to award damages for the breach of such agreements between carriers and shippers.³⁰

¶ O. COMMISSION NO JURISDICTION TO AUTHORIZE REFUND
FROM TARIFF RATE.

The Commission has no jurisdiction to authorize a carrier to make a refund from the charges collected on the basis of the published rate, unless upon hearing of a complaint it affirmatively find the rate charged to be excessive and unreasonable, and therefore unlawful.³¹

²⁹ *Hussey v. C. R. I. & P. Ry. Co.* (1908), 13 I. C. C. R. 366, motion for rehearing denied, 14 I. C. C. R. 215.

³⁰ *General Electric Co. v. N. Y. C. & H. R. R. Co. et al.*, 14 I. C. C. R. 237; *LaSalle & Bureau County Railroad Co. v. C. & N. W. Ry. Co.*, 13 I. C. C. R. 610.

³¹ *Poor Grain Co. v. C. B. & Q. Ry. Co. et al.* (1907), 12 I. C. C. R. 418.

¶ P. COMMISSION NO AUTHORITY TO AWARD REPARATION FOR DAMAGES DUE TO CARRIER'S FAILURE TO PERFORM SPECIAL SERVICE AS AGREED.

Where a special service is required of the carrier, such as rapid transit and speedy delivery in cases of perishable freight, a higher rate than for the carriage of ordinary freight is warranted, and, if a carrier charging a rate based on such special service, fails to render it, to the damage of the shipper, and without legal excuse, the remedy of the latter would seem to be by a proper proceeding in a court of law.³²

¶ Q. JURISDICTION OF COMMISSION TO AWARD REPARATION BASED ON DIVISION OF REVENUE BETWEEN CARRIERS.

The power of the Commission to award reparation does not extend to the division of rates between carriers. Claims *ex contractu* are not cognizable by the Commission. It cannot therefore order the payment of money for services performed nor for a debt due one carrier from another on account of joint rates for a joint service. Such claims rest upon contract, express or implied. The jurisdiction of the Commission and its authority in this respect are limited to reparation for damages caused by violation of some provision of the Act to Regulate Commerce.³³

¶ R. JURISDICTION OF COMMISSION TO AWARD DAMAGES FOR UNREASONABLE JOINT THROUGH RATE FROM A POINT IN THE UNITED STATES TO A POINT IN ADJACENT FOREIGN COUNTRY.

See *Section 101, Paragraph P, ante*.

§ 406. Act to Regulate Commerce contemplates Pecuniary Reparation.

The Act contemplates that pecuniary reparation in proper cases shall be made to persons sustaining damages through the violation of its provisions by a common carrier subject

³² Loud v. Southern Carolina R. Co. et al. (1892), 2 I. C. R. 732, 5 I. C. C. R. 529, 4 I. C. R. 205.

³³ LaSalle & Bureau County Rd. Co. v. C. & N. W. Ry. Co., 13 I. C. C. R. 610.

thereto, whether proceedings are instituted by complaint before the Commission, or are brought in the first instance in a court of the United States.³⁵

§ 407. Reparation limited to Damages arising from Violation of the Act.

In actions brought under Section 9 of the Act to Regulate Commerce for the recovery of damages, only those damages may be recovered which arise from violation of that statute.³⁶

Under Section 14 of the Act, the Commission can recommend reparation only in those cases where actual injury has been sustained from an omission or failure to observe some requirement of the Act.³⁷

§ 408. Reparation for Assessment of Charges in Excess of Published Schedule.

¶ A. MANNER IN WHICH OVERCHARGES ACCRUE.

Overcharges on shipments may accrue in two ways, i. e., by the assessment of an excessive rate, or due to error in weighing the shipment.

¶ B. MEASURE OF DAMAGES.

The measure of damages for charging more than the schedule rate is the difference between that rate and the rate actually exacted.³⁸

The measure of damages due to error in weighing the shipment is the difference between the freight charges based on the erroneous weight and those based on the actual weight of the shipment.

¶ C. RIGHT OF SHIPPER TO RECOVER OVERCHARGES.

If, after adopting, printing and posting a schedule of rates,

³⁵ *W. N. Y. & P. R. Co. v. Penn. Refining Co.* (1905), 137 Fed. Rep. 343, 70 C. C. A. 23, affirmed *Penn. Refining Co. Ltd. v. W. N. Y. & P. R. Co.* (1908), 208 U. S. 208; 28 Sup. Ct. Rep. 268, 52 L. ed. 456.

³⁶ *Van Patten v. C. M. & St. P. Ry. Co.* (1897), 81 Fed. Rep. 545.

³⁷ *Railroad Commission of Florida v. S. F. & W. Ry. Co. et al.* (1891), 5 I. C. C. R. 13; 3 I. C. R. 688.

³⁸ *Van Patten v. C. M. & St. P. Ry. Co.* (1897), 81 Fed. Rep. 545.

as required by Section 6 of the Act, the carrier exacts from a shipper in any form or by any device a rate greater than that fixed in the schedule, an action will lie, under Section 9, for the recovery of damages.³⁹

¶ D. REFUND OF TRANSFER CHARGES.

The Commission has awarded reparation to a complainant on account of an overcharge to cover transfer charges accruing because of the refusal of the delivering carrier to receive a car from its connections.⁴⁰

§ 409. Reparation for Assessment of Unreasonable Rates.

¶ A. MEASURE OF RECOVERY.

The measure of damages for the assessment of an unreasonable rate is the difference between the rate paid and the reasonable rate which should have been charged as determined by the Commission.⁴¹

And this is true even though the shipper may not ultimately be damaged by the payment of the higher rate.⁴²

Moreover, the owner of the freight who has been required to pay an unreasonable rate is entitled, upon proper complaint and showing, to reparation irrespective of the profits accruing from his business.^{42a}

¶ B. RATE MUST HAVE BEEN UNREASONABLE WHEN PAID TO JUSTIFY REFUND.

In order for the Commission to grant reparation for an un-

³⁹ *Van Patten v. C. M. & St. P. Ry. Co.*, 81 Fed. 545.

⁴⁰ *Germain Co. v. N. O. & N. E. Rd. Co. et al.* (1909), 17 I. C. C. R. 22.

⁴¹ *McGrew v. Mo. Pac. Ry. Co.* (1901), 8 I. C. C. R. 630; *American Grass Twine Co. v. C. St. P. M. & O. Ry. Co. et al.* (1907), 12 I. C. C. R. 141; *Allen & Co. v. C. M. & St. P. Ry. Co.* (1909), 16 I. C. C. R. 295; *Penn. v. F. C. & P. R. Co.*, 3 I. C. R. 740; *Flint & Walling Mfg. Co. v. L. S. & M. S. Ry. Co.* (1908), 14 I. C. C. R. 336.

⁴² *Burgess et al. v. Transcontinental Freight Bureau* (1908), 13 I. C. C. R. 668.

^{42a} *Kindelon v. Southern Pacific Co.* (1909), 17 I. C. C. R. 251, cited in *Commercial Club of Omaha v. Anderson & Saline River Ry. Co. et al.* (1910), 18 I. C. C. R. 532.

reasonable rate it must be determined that such rate was unreasonable at the time it was paid.⁴³ The Commission will decline to award reparation unless it can affirm with sufficient confidence that the rate was unreasonable in the past.⁴⁴

It is not the province of the Commission to order reparation for the exaction of an alleged unreasonable charge merely upon a showing that the carrier is willing to honor the claim.

An award of reparation can be predicated only upon an affirmative finding that the rate exacted was in fact excessive.⁴⁵

It is not sufficient that a shipper who is willing to receive a refund and a carrier that is willing to make a refund to that shipper shall agree to jointly request the Commission to authorize such refund.

The Commission should not and will not award reparation on the basis of a rate that is lower than that which the Commission would prescribe as reasonable.^{45a}

¶ C. REDUCTION IN RATE RAISES NO PRESUMPTION THAT FORMER RATE WAS UNREASONABLE FOR PURPOSES OF REPARATION.

The Commission has stated that it must not be understood that whenever it reduces a rate, that it necessarily follows that it will award reparation upon the basis of the rate established for two years preceding the filing of the petition. There is no conclusive presumption that a rate reasonable today was reasonable a year before or a day before, since reasonable rates vary from time to time, and some point of division must be found. Where, therefore, rates have been established and maintained by the carrier in good faith, especially where they have been long in effect and acquiesced in by shippers without protest, the Commission will not award reparation,

⁴³ Grain Shippers Association, etc., v. Ill. Cent. Rd. Co. et al. (1899), 8 I. C. C. R. 158.

⁴⁴ Johnston v. St. L. & S. F. Rd. Co. (1907), 12 I. C. C. R. 73.

⁴⁵ Pabst Brg. Co. v. C. M. & St. P. Ry. Co. et al. (1909), 17 I. C. C. R. 359.

^{45a} Pacific Elevator Co. v. C. M. & St. P. Ry. Co. et al. (1910), 17 I. C. C. R. 373.

even though the rate is reduced, unless it clearly appears that the rates paid in the past have been excessive.⁴⁶

It does not necessarily follow that because a rate is unreasonable today that it has been unreasonable at all times in the past.⁴⁷ Neither does it follow, as a matter of course, where the Commission finds that the ends of justice require the reduction of a rate complained of, that reparation must be ordered on shipments previously made.⁴⁸

A carrier voluntarily establishing a through rate less than the sum of the locals after a shipment has moved does not, *ipso facto*, become liable for the difference between the amount charged and the amount which would have been collected if the through rate had been in effect at the time of the movement.⁴⁹

¶ D. PRESUMPTION WHERE LONG-ESTABLISHED RATE IS ADVANCED FOR A SHORT PERIOD AND THEN REDUCED TO THE FORMER BASIS.

Where carriers voluntarily maintain a rate between certain points for a long period of time the presumption is that such rate is reasonable, and where a long established rate is raised for a short period and then voluntarily reduced to the former basis the presumption is that the advanced rate is unreasonable, but this presumption may be overcome by proof to the contrary.^{49a}

In case of *Commercial Club of Omaha v. Southern Pacific Co. et al.*^{49b} the Commission stated: "It will suffice to say that an order granting affirmative relief, and particularly in a case in which reparation is awarded, must always be predicated

⁴⁶ Penrod Walnut & Veneer Co. v. C. B. & Q. Rd. Co. et al. (1909), 15 I. C. C. R. 326.

⁴⁷ See note 44, *supra*.

⁴⁸ Farmers Warehouse Co. v. L. & N. Rd. Co. (1907), 12 I. C. C. R. 457.

⁴⁹ Stock Yards Cotton & Linseed Meal Co. v. M. K. & T. Ry. Co. et al. (1909), 17 I. C. C. R. 295.

^{49a} Sunderland Brothers Co. v. P. M. R. R. Co. et al. (1909), 16 I. C. C. R. 450.

^{49b} Commercial Club of Omaha v. Southern Pacific Co. et al. (1910), 18 I. C. C. R. 53.

upon a definite conviction, drawn from the record or from our own investigations, or from both, that the rate exacted on the shipments embraced within the complaint was an unreasonable rate."

¶ E. ENFORCEMENT OF RULES AND REGULATIONS NOT SHOWN IN
PUBLISHED TARIFF AS AFFECTING THE REASONABLENESS
OF THE RATE.

See *Section 93, Paragraph EE, ante.*

¶ F. RIGHT OF SHIPPER TO RECOVER DAMAGES SUSTAINED
THROUGH HIS REFUSAL TO SHIP BECAUSE CARRIER DE-
MANDED UNREASONABLE RATE.

Complainant desired to ship cottonseed in carloads from Louisiana stations on defendant's line to Hope, Ark., at the sum of local rates based on Texarkana, Ark., which sum was less than the published through charge, but defendant refused to apply its local rate to Texarkana, which was 12½ cents per 100 pounds on such through shipments, and also refused to allow complainant to ship locally to Texarkana under the 12½-cent rate in force to that point. *Held*, That, while the defendant was entitled to insist upon the application of the through rate to the through shipment to Hope, it could not lawfully refuse to receive and carry complainant's freight to Texarkana under its local rate to that point, and that complainant is entitled to reparation for damages resulting from its inability to ship 640 tons of cottonseed to Hope which it had contracted for and desired to have transported over defendant's line. That, while a plaintiff may not unnecessarily aggravate his damages, but must rather use reasonable care to mitigate them, this duty can hardly extend to complying with an unlawful demand of the defendant.⁵⁰

¶ G. RESPONSIBILITY OF CARRIERS PARTICIPATING IN JOINT
RATE.

There are joint responsibilities assumed by carriers when they publish a joint rate, and one of those obligations is to

⁵⁰ Hope Cotton Oil Co. v. T. & P. Ry. Co. (1905), 10 I. C. C. R. 696.

treat that rate as a unit and to treat the shipment thereunder as a unit; and this not because of any contractual relation between the shipper and the originating carrier, but because the act of the originating carrier in accepting the shipment in conformity with its tariff provisions was the act of all its connections joining in that tariff.^{50a}

Every carrier party to a joint rate is jointly and severally responsible for that rate.^{50b} Those carriers who actually participate in the transportation under a joint rate are jointly and severally liable in damages for the unreasonableness of that rate.^{50c}

¶ H. RESPONSIBILITY OF CARRIER UNDER RELEASED-VALUATION CLAUSE.

The initial carrier quoted the lowest rate on cotton linters applicable to shipments moving under a released valuation, but neglected to secure the shipper's signature to such release of valuation. The delivering carrier collected at a higher rate. *Held*, That it is the duty of the initial carrier not only to advise the shipper of the lower rates applying in case of release of valuation, but when informed of the shipper's desire to avail himself of such lower rates to obtain the shipper's signature in accordance with the tariffs.^{50d}

§ 410. Overcharge account of Excess Weight.

An overcharge account of difference in weight is a straight overcharge above the lawful tariff rate, and should be refunded without order of the Commission.^{50e}

^{50a} Pacific Purchasing Co. v. C. & N. W. Ry. Co., 12 I. C. C. R. 549, cited in Copper Queen Consolidated Mining Co. v. B. & O. R. Co. (1910), 18 I. C. C. R. 154.

^{50b} Osborne v. C. & N. W. Ry. Co. (1891), 48 Fed. Rep. 49; I. C. C. v. L. & N. R. R. Co. (1902), 118 Fed. Rep. 613.

^{50c} Nicola, Stone & Myers Co. v. L. & N. R. R. Co. (1908), 14 I. C. C. R. 199.

^{50d} Southern Cotton Oil Co. v. Southern Railway Company et al. (1910), 19 I. C. C. R. 79, citing Southern Cotton Oil Co. v. L. & N. Rd. Co. et al. (1910), 18 I. C. C. R. 180.

^{50e} Central Com'l Co. v. M. J. & K. C. Rd. Co. et al. (1909), 15 I. C. C. R. 25.

The Commission has unquestioned authority to avail reparation in such cases.^{50f}

§ 411. Reparation for Damages accruing from Violation of Long-and-Short-Haul Clause.

¶ A. RIGHT OF SHIPPER TO RECOVER.

Between May, 1902, and April, 1903, the complainants shipped five carloads of bananas from Charleston, S. C., to Danville, Va., the rate thereon being 43 cents per 100 pounds. During that period the rate on bananas from Charleston *via Danville* to Lynchburg, Va., was only 20 cents per 100 pounds. The lowest competitive rate affecting shipments to Lynchburg was 33 cents. *Held*, That since complainant's competitors at Lynchburg were favored with a rate 13 cents lower than that to which they were lawfully entitled, complainants were entitled to a like deduction from the rates actually paid; that reparation on the basis of 13 cents per 100 pounds should be awarded.⁵¹

¶ B. MEASURE OF DAMAGES.

The measure of damages for a violation by a carrier of the long-and-short-haul provision of the Act to Regulate Commerce is the difference between the rate charged for the shorter and that charged for the longer haul, multiplied by the number of hundred pounds of freight on which the higher rate was paid.⁵²

Where a carrier has charged a higher rate for a short than for a long haul, in violation of Section 4 of the Act, shippers who have paid the rate to the shorter distance point are entitled to recover the excess paid by them above the rate contemporaneously in force to the longer distance.⁵³

^{50f} Leonard v. M. K. & T. Ry. Co. et al. (1907), 12 I. C. C. R. 538.

⁵¹ Gardner & Clark v. Southern Ry. Co. (1904), 10 I. C. C. R. 342.

⁵² Osborne v. C. & N. W. Ry. Co. (1891), 48 Fed. Rep. 49; Junod v. C. & N. W. Ry. Co. (1891), 47 Fed. Rep. 290.

⁵³ Board of Trade of Lynchburg et al. v. Old Dominion S. S. et al. (1896), 6 I. C. C. R. 632.

§ 412. Protest by Shipper or Consignee against Payment of Excessive Freight Charges when Demanded by Carrier not a Necessary Prerequisite to Recovery of Reparation for Damages.

Proceedings for reparation before the Commission for indemnitory damages are purely statutory and correspond to actions at law sounding in tort. Bouvier defines "reparation" as "Damages for an injury; amends for a tort." If an injury is sustained on account of a violation of law, the proceeding is in its nature *ex delicto*, and therefore carries with it none of the features or incidents of an action *ex contractu*. In the very nature of the thing no protest is necessary where an injury is inflicted by the commission of a tort. The violation of the law produces the injury and completes the offense, and the person injured does not have to perform any conditions to entitle him to recover for the damage sustained.

Again, neither the carrier nor shipper can lawfully depart from the published rate. Both are charged with notice of what it is, and are punishable for deviating therefrom. It would be a vain thing to protest. The amount of the rate is fixed in the established schedule, and a penalty is imposed for charging or receiving "a greater or less or different compensation for such transportation of passengers or property." The law looks to the substance of things and does not require useless forms or ceremonies.

The Commission said: "Whatever may have been the rule at common law, the Act to Regulate Commerce prescribes the duty of both carrier and shipper, and it seems to us that—

"The contention now made, if adopted, would necessitate the holding that a cause of action in favor of a shipper arose from the failure of the carrier to make an agreement, when, if the agreement had been made, both the carrier and the shipper would have been guilty of a criminal offense and the agreement would have been so absolutely void as to be impossible of enforcement.⁵⁴

"Moreover, in view of the necessary relation between the carrier and shipper, the dependence in modern business life of

⁵⁴ T. & P. Ry. Co. v. Abilene Cotton Oil Co., 204 U. S. 426, 445, 51 L. ed. 553, 27 Sup. Ct. 350.

the latter upon the former, the right and duty of the carrier in the first instance to fix its charges, its obligation to adhere to the same until altered in the manner prescribed by law, and its right to enforce such changes by retaining possession of the freight transported or to demand payment of the freight charges as a prerequisite to the transportation, the parties are not upon an equal footing—a condition, even at common law, necessary to sustain the requirements of a protest and to negative the idea of voluntary payment. It is also manifest that to sustain this contention would be to open the way to the grossest discriminations, to prevent which is one of the leading purposes of the Act to Regulate Commerce.”⁵⁵

“We have already held that protest by the shipper or consignee against the payment of the lawfully established freight rate is not a necessary prerequisite to the recovery of damages resulting from an unreasonable charge and we adhere to this conclusion.”⁵⁶

§ 413. Commission will not order Reparation for the Purpose of Equalizing Rates.

The shipper should give his shipment to the carrier that has at that time the lowest lawfully published applicable rate, and failing to do this, he should not expect the Commission later to authorize refund for the purpose of equalizing the rate of the line to which he gave his business with the lower lawful rate of a competing line which he might have used.

The carrier whose lawful transfer rate is higher than that of a competing line has no right to solicit or accept shipment with the understanding or expectation that an order of reparation will be sought at the hands of the Commission for the purpose of equalizing to the shipper a rate which he could have secured by giving his shipment to another carrier.⁵⁷

⁵⁵ *Southern Pine Lumber Co. v. Southern Ry. Co.*, 14 I. C. C. R. 195.

⁵⁶ *Baer Bros. v. Mo. Pac. Ry. Co.*, 13 I. C. C. R. 329; see also *Nicola, Stone & Myers Co. v. L. & N. R. R. Co.*, 14 I. C. C. R. 199; *Pennsylvania Rd. Co. v. International Coal Mining Co.* (1909), 173 Fed. Rep. 1; *National Refining Co. v. A. T. & S. F. Ry. Co.* (1910), 18 I. C. C. R. 389.

⁵⁷ *Swift & Co. v. C. & A. Rd. Co.* (1909), 16 I. C. C. R. 426.

§ 414. Establishment of Through Route for Purpose of Awarding Reparation.

The Commission will decline to order the establishment of a through route and joint rate, for which there is no demand, for the purpose of awarding reparation upon a shipment that moved on local rates.⁵⁸

§ 415. Claim for Damages cannot be based on an Unlawful Privilege.

A shipper cannot be deprived through a carrier's negligence of any lawful privilege offered by another carrier, but such privilege must itself be not only one which the carrier may lawfully allow, but it must also be duly established and filed with the Commission.⁵⁹

Reparation based on breach of contract for a privilege which was not mentioned in the tariffs was denied the shipper because its allowance without publication was in violation of law.⁶⁰

A carrier is not responsible in damages for failure to perform a contract which is in violation of the Act.⁶¹

§ 416. Refund of Overcharge on Shipment to Adjacent Foreign Country.

An overcharge was collected on a shipment of tobacco to a point in Mexico. On application of the American carriers, in which the Mexican lines refused to join: *Held*, That the American lines might refund such part of the total overcharge as their divisions of the through rate bear to the entire through rate.⁶²

⁵⁸ Poor Grain Co. v. C. B. & Q. Ry. Co. et al. (1907), 12 I. C. C. R. 469.

⁵⁹ Kile & Morgan Co. v. Deepwater Ry. Co. et al. (1909), 15 I. C. C. R. 235, predicated on Folmer & Co. v. G. N. Ry. Co. et al., 15 I. C. C. R. 33.

⁶⁰ Shiel & Co. v. Ill. Cent. Rd. Co. et al., 12 I. C. C. R. 211.

⁶¹ I. C. C. v. C. & O. Ry. Co. et al. (1904), 128 Fed. Rep. 59.

⁶² Rule 126, Con. Rul. Bul. No. 4 (Dec. 8, 1908).

§ 417. Refund where there is a Clerical Error in the Tariff Resulting in Higher Rate.

A railroad company admitted that the insertion of a certain rate in its tariffs was the result of a clerical error, and the rate was later reduced. On claim of shipper for reparation the Commission granted the defendant authority to refund to the complainant the difference between the rate charged and the subsequent reduced rate.⁶³

§ 418. Where Rates have been voluntarily reduced Commission will not Award Reparation as a matter of Course.

When carriers have, of their own volition, made a reduction in rates, it is not the practice of the Commission to award reparation as a matter of course on all shipments made previous to the reduction.

Such a policy would operate as the strongest possible deterrent to the voluntary decrease of rates.⁶⁴

A voluntary reduction of a rate by a carrier creates no presumption of liability for reparation on shipments under the rate as it existed before the reduction.⁶⁵

In *Foster Lumber Co. v. A. T. & S. F. Ry. Co. et al.*,⁶⁶ the Commission, per Lane, *Commissioner*, said: "It must be apparent that it is to the interest of the shipping public in no wise to embarrass carriers in decreasing rates when they think such decrease equitable. Under existing standards, all will admit that there can be a wide divergence of opinion as to what a reasonable rate between two points may be, and any policy pursued by this Commission tending to make it burdensome

⁶³ *Holcomb-Hayes Co. v. Ill. Cent. Rd. Co.* (1907), 12 I. C. C. R. 128.

⁶⁴ *Pilant v. A. T. & S. F. Ry. Co. et al.*, 15 I. C. C. R. 178, citing *Foster Lumber Co. v. A. T. & S. F. Ry. Co.*, 15 I. C. C. R. 56.

⁶⁵ *Diehl, etc., v. C. M. & St. P. Ry. Co. et al.* (1909), 16 I. C. C. R. 190; *Ottumwa Bridge Co. v. C. M. & St. P. Ry. Co. et al.*, 14 I. C. C. R. 121; *Menefee Lumber Co. v. T. & P. Ry. Co.* (1909), 15 I. C. C. R. 49; *Penn. Tobacco Co. v. Old Dominion S. S. Co. et al.* (1910), 18 I. C. C. R. 197.

⁶⁶ *Foster Lumber Co. v. A. T. & S. F. Ry. Co. et al.* (1909), 15 I. C. C. R. 56, affirmed *Foster Lumber Co. v. G. C. & S. F. Ry. Co.* (1909), 17 I. C. C. R. 385.

to the carriers to reduce a rate would in the end work a hardship to the shippers. For these reasons it would appear unwise for the Commission to adopt a policy by which, upon the voluntary reduction of a rate, a shipper who had previously paid the higher rate should recover as damages whatever difference there might be between the rate which he was compelled to pay and the rate newly established by the railroad, where application had not been made either to the railroad or to the Commission for a reduction of the rate prior to the time at which the railroad itself made such reduction and where it does not clearly appear that the rate was at the time unreasonable. The presumption does not arise because a reduction is made by a railroad that the rate previously existing was unreasonable under the conditions and circumstances then obtaining. Any other theory would compel us to the absurd conclusion that for an indeterminate period, perhaps barred only by the statute of limitation within the Act, a shipper would be entitled to a progressive series of awards of reparation depending upon the number of reductions which the railroad made."

§ 419. Commission will not order Reparation where its Effect will be to make a Reconsigning Privilege Retroactive.

The Commission has consistently held in the past that it could not with propriety make a reconsignment privilege retroactive in practical effect by ordering reparation on shipments made at a time when the same was not available, the basis of such reparation being the nonavailability of such privilege at the time shipments moved and the subsequent publication of the same. It seems clear that the privilege as published in tariffs in effect at the time the shipment in question moved was not applicable thereon because of one of the essential conditions under which that privilege was to be had, to wit, that the reconsignments should be accomplished within seventy-two hours after arrival of the shipment at first destination, was not met. The Commission stated that it was not convinced that the carriers are subject to a penalty for failure to notify consignor of refusal of the shipment at destination by con-

signee in time to admit of the reconsignment to a new destination before the expiration of seventy-two hours time limit after the completion of the transportation service contemplated under the original contract of shipment.⁶⁷

§ 420. Shipper cannot recover on Contract Rate Different from Published Rate.

A contract made between a carrier and a shipper for a rate lower than the published through rate is not binding, and its violation furnishes no ground for redress under the Act to Regulate Commerce.⁶⁸

§ 421. Damages accruing account Detention of Goods until Published Rate is Paid by Consignee.

Where a shipper has obtained transportation of his goods between interstate points at a rate specified in the bill of lading which is less than the published tariff rate, such shipper, whether or not he knew that the rate stated in the bill of lading was less than the published rate, is not entitled to damages for detention of his goods, where delivery was refused because the published rate had not been tendered.⁶⁹

§ 422. Where Damages Result to the Shipper on account of Failure of the Carrier to Post Rate Schedules.

Whether by failure to post an established schedule a carrier becomes subject to penalties provided in the Act to Regulate Commerce, or whether, if damages are occasioned to a shipper by such omission, a right to recover on that ground alone would obtain, seems to have never been directly decided by the Courts.

⁶⁷ *Sunnyside Coal Mining Co. v. D. & R. G. R. R. Co. et al.*, 16 I. C. C. R. 558.

⁶⁸ *Ames-Brooks Co. v. Rutland Rd. Co. et al.*, 16 I. C. C. R. 479; *Gulf C. & S. F. R. R. Co. v. Hefley*, 158 U. S. 98, 39 L. ed. 910, 15 Sup. Ct. 802; *T. & P. Ry. Co. v. Mugg*, 202 U. S. 242, 50 L. ed. 1011, 26 Sup. Ct. 628; *Poor Grain Co. v. C. B. & Q. Ry. Co. et al.* (1907), 12 I. C. C. R. 418.

⁶⁹ *T. & P. Ry. Co. v. Mugg*, 202 U. S. 242; 26 Sup. Ct. Rep. 628; 50 L. ed. 1011.

The Commission, in denying reparation in the case of *Pueblo Transportation Association v. Southern Pacific Co.*,⁷⁰ stated:

“The Act to Regulate Commerce authorizes the Commission to condemn an unreasonable rate, to prescribe a rate to be applied in lieu thereof and to award damages under the rate so condemned; but in all proceedings before the Commission, both formal and informal, the essential prerequisite to any award of damages is the condemnation of a rate, rule, or practice as unreasonable and the establishment in lawful tariff publications of the rate, rule, or practice that is made the basis of such award.

“It is unfortunate that additional expense should come to shippers because of errors on part of agents of carriers, but the relations between a shipper and a common carrier are so different from the relations between private business enterprises that a somewhat different rule must apply; otherwise the underlying principles of the Act to Regulate Commerce would be seriously impaired, the purposes of the Act would be defeated, and the very discriminations which it condemns would be sanctioned.

“To authorize refund in this case would be to authorize the carriers to receive and the shippers to pay charges less than those stated in the lawfully published tariff in effect at the time, and that without any allegation, admission or finding that the basis of those charges was unreasonable and unjust. It would permit the carrier by its own Act to effect a departure from the terms of its lawful tariff. It would be simply to authorize refund because of admitted error on part of the carriers’ agents in not posting said tariff at stations thirty days before its effective date.

“We are not to be understood as intimating that neglect to post tariffs or willful failure so to do can with impunity be resorted to by carriers.

“It is an unpleasant duty to deny such a request as this and thus prevent the shippers from receiving refunds which

⁷⁰ *Pueblo Transportation Co. v. Southern Pacific Co.* (1908), 14 I. C. C. R. 82.

the carrier is willing to pay, but when the issuance of such authority would be in contravention of the terms or purposes of the law or would establish a precedent which would make toward defeat of such purposes or seriously embarrass efforts to administer the law according to its terms and full spirit, it is clearly our duty to decline.”

However, in the case of *Kiel Woodenware Co. v. C., M. & St. P. Ry. Co.*,^{70a} the Commission awarded reparation for damages accruing to the complainant, by reason of defendant's failure to post its tariff in accordance with the statute, in the amount of the difference between the rate exacted from the complainant and the rate under which the traffic would have been forwarded had defendant not failed to post its tariff.

These two cases seem to be at variance with each other.

§ 423. Where Damages result to the Shipper account Failure of Initial Carrier to secure Concurrence of Connecting Line.

If a carrier files and posts a tariff naming joint rates from stations upon its line to destinations upon a connecting line in which tariff the connecting line does not concur, the initial line thereby becomes responsible to the shipper under its tariff. If the shipper is compelled to pay, under rates legally in effect a greater transportation charge than that named in the tariff he may recover from the initial line the difference; certainly if the rate posted by it is found to be reasonable.^{70b}

§ 424. Liability of Carriers for misrouting Shipments and Reparation therefor.

¶ A. WHERE NO SPECIFIC INSTRUCTIONS ARE GIVEN BY THE SHIPPER.

If a carrier in the absence of positive instructions from the shipper, routes a car via an indirect and expensive line instead

^{70a} *Kiel Woodenware Co. v. C. M. & St. P. Ry. Co.* (1910), 18 I. C. C. R. 242.

^{70b} *Black Horse Tobacco Co. v. I. C. R. R. Co. et al.* (1910), 17 I. C. C. R. 588.

of the direct and cheaper route, so as to burden the shipper with needless expense, such action would be *prima facie* unjust and unreasonable, and without justification would constitute a fair basis for an order of reparation.⁷¹

Where in the absence of specific routing instructions from the shipper, the carrier by disregarding its duty to forward the shipment via the cheapest reasonable available route, causes a higher rate to result, it is liable to the shipper for such increased rate.⁷²

Where a carrier without any instructions from the shipper sends a car via a more expensive route, such action is *prima facie* without justification and constitutes a fair basis for reparation.⁷³

Damage resulting to a shipper from a disregard of the obligation of the carrier, in the absence of routing instructions from the shipper to the contrary to forward shipments via the reasonable and practicable route over which the lowest charge for the transportation applies, can only be repaired by reparation to the extent of the difference between the higher rate applied over the line via which the traffic improperly moved and the lower rate which would have been applied had the freight been properly forwarded.⁷⁴ This is a rule of obvious propriety.⁷⁵

¶ B. WHERE CARRIER DISREGARDS SHIPPER'S INSTRUCTIONS.

If a carrier contrary to a shipper's instructions, forwards cars via a more expensive route, so as to burden the shipper

⁷¹ Dewey Bros. v. B. & O. Rd. Co. et al. (1905), 11 I. C. C. R. 481; Poor Grain Co. v. C. B. & Q. Ry. Co. (1907), 12 I. C. C. R. 418.

⁷² Henderson Lumber Co. v. K. C. Ry. Co. et al. (1909), 16 I. C. C. R. 129; Thatcher Mfg. Co. v. N. Y. C. & H. R. Rd. Co. et al. (1909), 16 I. C. C. R. 126.

⁷³ Poor Grain Co. v. C. B. & Q. Ry. Co., 12 I. C. C. R. 418; Pankey v. B. & O. R. Co., 3 I. C. C. R. 658; 3 I. C. R. 33, cited and approved.

⁷⁴ Hennepin Paper Co. v. Northern Pacific Ry. Co. et al. (1907), 12 I. C. C. R. 535; Washington Broom & W. W. Co. v. C. R. I. & P. Ry. Co. (1909), 15 I. C. C. R. 219; Flaccus Glass Co. v. C. C. C. & St. L. Ry. Co. et al. (1908), 14 I. C. C. R. 333.

⁷⁵ See note 58, *supra*.

with needless expense, such action would be *prima facie* unjust and unreasonable, and without justification would constitute a fair basis for an order of reparation.⁷⁶

Where a carrier unnecessarily diverts a shipment enroute, without the knowledge or consent of the shipper, the carrier is liable to an award of reparation for damages sustained as a result of such diversion.⁷⁷

¶ C. THE CARRIER RESPONSIBLE FOR MISROUTING IS THE ONLY ONE THAT SHOULD MAKE REPARATION.

Where a shipment has been misrouted, in consequence of which the damages result to the shipper, only the carrier responsible for such misrouting should be required to make reparation; as to require reparation in such a case is only to require the carrier to make just compensation for injury resulting from failure to perform its duty; but to require or permit any other carrier than the one responsible for the misrouting to participate in the making of such reparation would be to permit or require departure from established rates, which is expressly forbidden by law.⁷⁸

Moreover, if all the roads composing a through line over which misrouted traffic moves could be lawfully permitted to contribute to such reparation as may be necessary to protect the shipper in his rights, there would be an ever-present temptation and effective method for misrouting of traffic for competitive reasons without the previous establishment of competitive rates as contemplated by law for the full information and free use of all shippers without discrimination.⁷⁹

Before delivering his merchandise to a carrier, a shipper was quoted a rate of 16 cents via all available routes between the points of origin and destination. Bills of lading were issued showing that rate, and, at the shipper's request, also

⁷⁶ See note 71, *supra*.

⁷⁷ *Carstens Packing Co. v. O. R. & N. Co. et al.* (1909), 15 I. C. C. R. 482.

⁷⁸ See note 74, *supra*.

⁷⁹ *Hennepin Paper Co. v. Northern Pac. Ry. Co.*, 12 I. C. C. R. 535 (1907).

showing routing via a named junction. Before delivery was made at destination it was discovered that the 16-cent rate did not apply over that route, and the delivering carrier therefore assessed the sum of the locals through that junction, amounting to 65 cents per 100 pounds. *Held*, That as the rate quoted was inserted in the bill of lading, shipment ought to have been moved over a route carrying that rate.⁸⁰

Where a shipper has given routing instructions which a carrier fails to transmit to its connection, the carrier so failing shall be responsible for all additional transportation charges resulting from a misrouting of the shipment.⁸¹

¶ D. WHERE INITIAL CARRIER IS RESPONSIBLE FOR MISROUTING.

An initial carrier delivered a shipment to a connecting line, but did not give it any routing instructions beyond noting on the waybill the through rate via the cheaper of two available routes. The connecting carrier sent it over the route yielding it the greater revenue, but carrying the higher through rate; *Held*, That the initial carrier is liable for the misrouting.⁸²

The initial carrier, disregarding instructions to route a shipment through a particular junction, moved it to destination over its own lines, the rates over the two routes being the same. Although the shipment was consigned to a private person, it was in fact the property of the connecting line, which therefore could have hauled it free of charge from the junction point to destination, notwithstanding the fact that the initial carrier had no notice and was not chargeable with notice that it was company material: *Held*, That the initial line is liable for additional charges on the ground that a carrier exercising the right to dictate intermediate routing must make its election at the time it accepts the shipment, and that if the carrier accepts the shipment with specific instructions it must so move

⁸⁰ Rule 186, Con. Rul. Bul. No. 4 (June 8, 1909), cited in *Alpha Portland Cement Co. v. D. L. & W. Rd. Co. et al.* (1910), 19 I. C. C. R. 297.

⁸¹ Rule 190, Con. Rul. Bul. No. 4 (June 22, 1909).

⁸² Rule 137, Con. Rul. Bul. No. 4.

the traffic or bear the damages arising out of its departure from the instructions.⁸³

Where the initial carrier misroutes a shipment, in consequence of which the shipper is compelled to pay a higher rate, such carrier will be required to make reparation to the extent of the difference between the higher rate applied and the lower rate which would have been applied had the freight been properly forwarded. To require this is only to require the carrier to make just compensation for injury resulting from failure to perform its duty.⁸⁴

¶ E. MISROUTING VIA LINE THAT HAS NO TARIFF ON FILE.

A shipment was misrouted and passed over a route via a part of which no rate was filed with the Commission, and was thus subjected to a higher charge than the through rate via the proper route. *Held*, That the misrouting carrier may be authorized to make refund account of its error in misrouting shipments, and that carrier which participated in the transportation without lawful tariff applicable thereto should be dealt with through the Department of Prosecutions.⁸⁵

¶ F. WHERE CONNECTING CARRIER RECEIVES SHIPMENT WITHOUT ROUTING INSTRUCTIONS.

A connecting line receiving a shipment without instructions may demand instructions from the initial carrier, but if, instead of pursuing that course, it assumes the responsibility of routing the shipment it must accept the resulting liability for any damage in the way of increased charges that necessarily and directly flows from its mistake in selecting the wrong route. It is not excused by the fact that the shipper had given

⁸³ Rule 143, Con. Rul. Bul. No. 4.

⁸⁴ *Hennepin Paper Co. v. Northern Pacific Ry. Co. et al.* (1907), 12 I. C. C. R. 535; *Pankey v. R. & D. Co. et al.* (1890), 3 I. C. C. R. 658; 3 I. C. R. 33; *Kile & Morgan Co. v. Deepwater Ry. Co.*, 15 I. C. C. R. 235; *Willson Bros. Lbr. Co. v. Norfolk Southern Rd. Co. et al.* (1910), 19 I. C. C. R. 293.

⁸⁵ Rule 90, Con. Rul. Bul. No. 4.

correct routing instructions which the initial carrier had neglected to note on the transfer billing.^{85a}

¶ G. REFUND OF DRAYAGE CHARGES CAUSED BY MISROUTING.

Where a shipment was routed contrary to the express directions of the shipper and the consignee was compelled to move the shipment by dray from the station of delivering carrier to the destination to which it would have been switched if properly routed, the carrier may, under the particular circumstances of the case, be authorized by the Commission to refund to the shipper the reasonable actual cost of the drayage.⁸⁶

¶ H. CARRIERS REIMBURSING CONNECTING LINES FOR MISROUTING.

The Commission has held that if a carrier adjust a claim for misrouting and later learns that the responsibility for such misrouting actually rests upon another carrier, such other carrier may voluntarily reimburse the carrier that made the payment in full amount of such claim, or the matter may, if necessary, be referred to the Commission for determination of the question of which carrier is responsible for the error.⁸⁷

The Commission has stated that under this rule any carrier, whether it be the initial or a connecting line that misroutes a shipment, thereby causing additional transportation charges, may, upon admitting its error, pay the damages arising therefrom, provided the whole burden is borne by it without participation therein by its connections. But that the admission must be in good faith with respect to the particular cases of misrouting. The Commission further held that it will not recognize the validity of any agreement between two or more carriers by which one assumes the responsibility for misrouting in all cases.⁸⁸

An initial carrier misrouted a shipment, resulting in addi-

^{85a} *Duluth & Iron Range Rd. Co. v. C. St. P. M. & O. Ry. Co. et al.* (1910), 18 I. C. C. R. 485, construing Rule 214, Con. Rul. Bul. No. 4.

⁸⁶ Rule 25, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

⁸⁷ Rule 214, Con. Rul. Bul. No. 4 (March 18, 1907).

⁸⁸ Rule 198, Con. Rul. Bul. No. 4 (June 21, 1909).

tional transportation charges, for which it admitted responsibility and made settlement in accordance with the above rules. Subsequently the connecting line over which the shipment moved became a party to a tariff naming the same rate that applied at the time of the movement over another route. Thereupon the initial carrier and the connecting line requested permission to divide the misrouting overcharge: *Held*, That the petition must be denied upon the ground that such a course would amount to the retroactive application of a published rate.⁸⁹

¶ I. REFUND OF OVERCHARGE CAUSED BY MISROUTING
THROUGH ERROR OF CARRIER'S AGENT.

If a carrier's agent misroutes a shipment and thus causes extra expense to the shipper over and above the lawful charges via another available route of the class designated by shipper—that is, all-rail or rail-and-water—over which such agent had applicable rates which he could lawfully use, and responsibility for agent's error is admitted by the carrier, such carrier may, as to shipments moving subsequent to March 18, 1907, adjust the overcharge so caused by refunding to shipper the difference between the lawful charges via the route over which the shipment moves and what would have been the lawful charges on same shipment at the same time via the cheaper available route of the class designated which could have been lawfully used. Such refund must in no case exceed the actual difference between the lawful charges via the different routes as specified, and must in every instance be paid in full by the carrier whose agent caused such overcharge and must not be shared in by or divided with any other carrier, corporation, firm, or person. This authority is limited strictly to the cases specified and to the circumstances recited, and does not extend or apply to instances in which soliciting or commercial agents of carriers induce shippers to route shipments over a particular line via which a higher rate obtains than is effective via some other line.⁹⁰

⁸⁹ Rule 205, Con. Rul. Bul. No. 4 (June 29, 1909).

⁹⁰ See note 87, *supra*.

The rule is intended to apply to cases in which the agents who bill or actually forward or divert shipments through error or oversight send the shipments via routes that are more expensive than those directed by the shippers or available in the absence of routing instructions by shippers. It must not be used in any case or in any way to "meet" or "protect" a rate via another route or gateway via which the adjusting carrier has not in its tariffs at the time the shipment moves rates which are available and lawfully applicable thereto, nor as a means or device by which to evade tariff rates or to meet the rate of a competing line or route, nor to relieve shipper from responsibility for his own routing instructions.⁹¹

The prerequisites to any refund under this rule are admission by carrier of responsibility for its agent's error in misrouting the shipment, and such carrier's willingness to bear the extra expense so caused, without recourse upon any other carrier for any part thereof. If, therefore, the error is discovered before the shipment has been delivered to consignee or before charges demanded upon same have been paid, the carrier acknowledging responsibility for the error may authorize the delivering carrier to deliver shipment upon payment of the charges that would have applied but for the misrouting and to bill upon it for the extra charge; or, if the shipment has been delivered undercharged before the error is discovered, the carrier that acknowledged responsibility for the error may pay the undercharge to the carrier that delivered the shipment instead of requiring it to collect the undercharge from shipper to be refunded to shipper.⁹²

The Commission has said:⁹² "Shippers must bear in mind that there is a limit beyond which an agent of a carrier could reasonably be expected to know as to terminal delivery or local rates at distant points and on lines of distant roads to or with which he has no specific joint through rates. Consignors and consignees should co-operate with agents of carriers in avoiding misunderstandings and errors in routing, and must expect to bear some responsibility in connection therewith."

⁹¹ See note 87, supra.

⁹² Ibid.

§ 425. Reparation for Failure of Carrier to perform Expedited Service as Agreed in Consideration of Increased Rate.

Where a carrier charges and a shipper agrees to pay a higher charge in consideration of special or expedited service and the carrier fails to furnish the service so agreed upon, it cannot lawfully and properly demand the higher compensation, and if such higher charge is collected the shipper is entitled to reparation at the hands of the Commission.⁹³

This principle is recognized in contracts between the Federal Government and the railways for fast mail service and by the railways in connection with their excess-fare limited passenger trains. In both instances carriers forfeit a part of their compensation if they fail to make the time agreed upon.⁹⁴

§ 426. Reparation for Damages account Unjust Discrimination.

¶ A. RECOVERY FOR ASSESSMENT OF DISCRIMINATORY CHARGE.

Where a discriminatory freight charge has been exacted of a shipper, reparation may properly be awarded.⁹⁵

¶ B. DISCRIMINATION IN FURNISHING CARS.

Where unjust discrimination is practiced by a carrier against a shipper in the distribution of cars, the difficulty of measuring the actual damage makes adequate reparation, for the injustice done, impossible. The best that can be done is to estimate as nearly as may be that which may with reasonable certainty be directly charged to such unfair treatment, and for the rest the shipper must suffer, as is always the case where injustice is done by such discriminations.⁹⁶

Discrimination in furnishing cars is rarely a continuing offense which can be discontinued for the future under a gen-

⁹³ American Fruit Union v. C. N. O. & T. P. Ry. Co. (1907), 12 I. C. C. R. 411.

⁹⁴ Ibid.

⁹⁵ City Gas Co. v. B. & O. Rd. Co. (1905), 11 I. C. C. R. 371; Texas Cement Plaster Co. v. St. L. & S. F. Rd. Co. (1907), 12 I. C. C. R. 68.

⁹⁶ Eaton v. C. H. & D. Ry. Co. (1906), 11 I. C. C. R. 619.

eral regulating order from the Commission directing the carrier to cease and desist therefrom.

The remedy, therefore, must generally be found in an order awarding reparation for the injury found to have been done.⁹⁷

Examples: The defendant during a certain period wrongfully refused to furnish coal cars, which precluded the complainants from taking out of their mine 193 tons of coal which they could have sold at a profit of 50 cents per ton. *Held*, That the complainants were entitled to reparation in the sum of \$96.50.⁹⁸

During a certain period complainant was compelled to and did refuse to purchase 900 cross-ties which were offered to it on account of defendant's wrongful refusal to provide cars. The ties were afterwards purchased by competitors of the defendant and sold at a profit of 7 cents each. *Held*, That the complainant was entitled to reparation in the sum of \$630.⁹⁹

¶ C. MEASURE OF DAMAGES.

In an action by a shipper against a railroad company under the Interstate Commerce Act to recover damages because of discrimination in rates made in favor of other shippers between the same terminals, the measure of damages recoverable is the difference between the amount paid by the plaintiff and the amount it would have paid at the lowest rate charged on any shipment carried under substantially the same circumstances and conditions during the same time, and not the difference between the rates paid by it and the average rate paid by any other shipper.¹⁰⁰

¶ D. DISCRIMINATION MUST BE ACTUAL.

Discrimination in fact and not mere intention to discriminate is unlawful under the Act to Regulate Commerce. The offering of a discriminating rate which is never carried into

⁹⁷ Richmond Elevator Co. v. P. M. Rd. Co. (1905), 10 I. C. C. R. 629.

⁹⁸ Glade Coal Co. v. B. & O. Rd. Co. (1904), 10 I. C. C. R. 220.

⁹⁹ Paxton Tile Co. v. Det. Southern Rd. Co. (1905), 10 I. C. C. R. 422.

¹⁰⁰ See note 65, *supra*.

effect cannot be construed as unlawful; nor can a shipper who is charged a higher rate be said to be injured thereby.¹⁰¹

**¶ E. LIABILITY OF CONNECTING CARRIER FOR DISCRIMINATION
PRACTICED BY INITIAL CARRIER.**

A connecting carrier which takes the cars as they are delivered to it by the initial carrier is not liable for a discrimination in favor of shippers of oil in tank cars and against shippers of oils in barrels which may be practiced by the initial carrier merely because such connecting carrier has participated in the adoption of a joint through rate for barrel shipments which, in itself, is reasonable, although, by Section 8 of the Act to Regulate Commerce, a carrier which "shall do, cause to be done, or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful," shall be liable to the full amount of the damages sustained by one injured thereby.¹⁰²

§ 427. Accrued Claims not invalidated by Subsequent Cancellation of Absorption Rule.

A tariff providing for the absorption of inbound switching charges on certain traffic also provided that they would not be absorbed when the expense bills therefor were presented more than six months after their date. Within six months after certain switching services had been performed bills therefor were presented, but the carrier refused payment on the ground that during the interval the absorption rule referred to had been canceled: *Held*, That the subsequent cancellation could not invalidate a claim already accrued.¹⁰³

§ 428. Damages to Fruit by delayed Notice of Arrival at Destination.

An express company undertook to notify the consignee of

¹⁰¹ *Lehigh Valley Rd. Co. v. Rainey et al.* (1902), 112 Fed. Rep. 487.

¹⁰² *Penn. Refining Co. Ltd. v. W. N. Y. & P. Rd. Co. et al.* (1908), 208 U. S. 208; 52 L. ed. 456, 28 Sup. Ct. 268; affirming 137 Fed. Rep. 343, 70 C. C. A. 23.

¹⁰³ Rule 136, Con. Rul. Bul. No. 4 (Jan. 27, 1909).

the arrival at destination of a shipment of strawberries, but failed for some days to effect notice, partly because of an erroneous address on a postal card: *Held*, That the damages resulting from the delay was not due to any violation of the Act to Regulate Commerce, and therefore was not cognizable by the Commission.¹⁰⁴

It should be noted, however, in connection with the above, that the Act as amended June 18, 1910, makes it the duty of all common carriers subject to its provisions to establish, observe and enforce just and reasonable regulations and practices affecting the delivery of property.^{104a}

§ 429. Remote or Speculative Damages.

¶ A. IN GENERAL.

In an action for reparation the best that can be done is to estimate as nearly as may be that which may with reasonable certainty be charged directly to the unfair treatment alleged,¹⁰⁵ and remote or speculative damages may not be taken into consideration.

¶ B. LOSS OF EMPLOYMENT.

Through error of a railroad agent complainants were unable to use the return coupons of their round-trip special excursion tickets with stopover privileges, but without additional cost were supplied by the carrier with regular limited tickets. Upon complaint filed setting up claim for damages for loss of employment as fruit-pickers which complainants hoped to secure at a point where their original tickets permitted stopovers; *Held*, That such damages are altogether too speculative to be accepted either as the basis for an order of the Commission or for a judgment in a court of law.¹⁰⁶

¹⁰⁴ Rule 127, Con. Rul. Bul. No. 4 (Dec. 8, 1908).

^{104a} Act to Regulate Commerce (as amended June 18, 1910).

¹⁰⁵ *Eaton v. C. H. & D. R. Co.* (1906), 11 I. C. C. R. 619.

¹⁰⁶ *Alexander et al. v. C. B. & Q. Rd. Co. et al.* (1909), 16 I. C. C. R. 103.

¶ C. LOSS OF PROFIT.

Profits, which but for the carrier's wrongful refusal in providing transportation, a shipper might have made by purchasing a certain commodity, are too problematic to be allowed.¹⁰⁷

Loss of profit based on canceled contracts and avoided sales alleged to have been caused by carrier's unfair treatment is impossible of determination.¹⁰⁸

¶ D. LOSS OF BUSINESS.

Complainant averred that as a result of being unjustly discriminated against by the defendant his business had been less per month than it was during the months previous to such period. *Held*, That as such a result might flow from many causes, it could not fairly be said that such a showing entitled complainant to reparation in that respect.¹⁰⁹

¶ E. LOSS OF PRESTIGE.

In an action against a carrier for refusal to make delivery of certain carloads of lumber, such refusal based upon nonpayment of demurrage charges which plaintiff alleged were discriminatory, damages caused to plaintiff's "standing and credit" in the community, because of such nondelivery, are too remote to be recovered.¹¹⁰

¶ F. INABILITY TO HARVEST CROPS.

Complainants alleged that because of extortionate freight rates they were compelled to allow a large percentage of berries to remain on the vines unharvested. The Commission *Held*, That the damages thus suggested were purely speculative and not susceptible of legal computation. They are as un-

¹⁰⁷ Hope Cotton Oil Co. v. T. & P. Ry. Co. (1905), 10 I. C. C. R. 696.

¹⁰⁸ Eaton v. C. H. & D. Ry. Co. (1906), 11 I. C. C. R. 619; see also Gallogly & Firestine v. C. H. & D. Ry. Co. (1905), 11 I. C. C. R. 1; Barden & Swarthout v. L. V. R. Co. (1907), 12 I. C. C. R. 193.

¹⁰⁹ Rogers & Co. v. P. & R. Ry. Co. (1907), 12 I. C. C. R. 308; Eaton v. C. H. & D. Ry. Co. (1906), 11 I. C. C. R. 619.

¹¹⁰ Clement v. L. & N. R. Co. (1907), 153 Fed. Rep. 979; Eaton v. C. H. & D. Ry. Co. (1906), 11 I. C. C. R. 619.

certain and remote as though claimed on the ground that if the transportation rate had been reasonable the complainant would have raised a larger crop, or have purchased and sold at a profit in other markets the crops of neighboring growers.¹¹¹

§ 430. A Passenger Wrongfully deprived of Benefit of Return Coupon of a Round-Trip Excursion Ticket May Have Reparation.

A passenger holding a round-trip ticket on the certificate plan, or a round-trip ticket requiring validation, was, through ignorance or fault of a carrier's agent, deprived of the benefit of the reduced fare on the return journey and was compelled to purchase a full-fare ticket. The Commission in awarding reparation authorized carriers in such cases without a special permissive order to refund to the passenger the difference between the total fare paid by him and the reduced rate which he would have enjoyed except for the carrier's error; and further held that the carrier at fault must bear the full burden without recourse upon any other road participating in the carriage.¹¹²

§ 431. Responsibility of Carrier for Failure to furnish Proper Cars to Which Rates Apply.

Certain rates on coal published by a carrier to points on a connecting line were expressly limited to shipments "loaded in box or stock cars only," because the connection refused to handle coal shipments in open cars. Upon demand for cars for a shipment to such points the carrier, instead of furnishing box cars to which the rate applied, furnished coal cars, which carried a higher rate: *Held*, That the carrier having issued the tariff itself, and having furnished cars that did not comply with the tariff requirements, was responsible for the excess charges.^{112a}

¹¹¹ Penn. v. F. C. & P. R. Co. (1892), 3 I. C. R. 740; 5 I. C. C. R. 37.

¹¹² Rule 167, Con. Rul. Bul. No. 4 (April 13, 1909).

^{112a} Rule 120, Con. Rul. Bul. No. 4 (Nov. 13, 1908).

§ 432. Where Freight is unloaded by Carrier's Agent in Depot by Mistake Instead of Switching Car to Consignee's Siding.

Carrier's agent unloaded into the freight house a carload shipment which should have been delivered without additional cost at the warehouse of the consignees. The consignees accepted delivery at the freight house, drayed the shipment to their warehouse, and demanded from the carrier refund of sum equal to the cost of such drayage; *Held*, That consignees should have insisted upon the proper delivery provided for in carrier's tariff, and that the Commission is without authority to order or sanction such refund.¹¹³

§ 433. Liability of Receiving Carrier for Loss or Damage on Interstate Traffic.

¶ A. PROVISION OF THE STATUTE.

The Act to Regulate Commerce provides:¹¹⁴ "That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed."

¶ B. REMEDIES UNDER LAW EXISTING AT PASSAGE OF ACT NOT BARRED.

The Act provides that nothing in the above section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.¹¹⁵

¹¹³ Crosby & Meyers v. Goodrich Transit Co. et al. (1909), 17 I. C. C. R. 175.

¹¹⁴ Act to Regulate Commerce. Section 20. This provision is commonly called the "Carmack Amendment" to the Hepburn Act of June 29, 1906.

¹¹⁵ Ibid.

This leaves a shipper free to resort to the law of a State applicable to his contract.¹¹⁶

¶ C. INITIAL CARRIER MAY HAVE RECOURSE UPON CARRIER RESPONSIBLE FOR LOSS OR DAMAGE.

The statute provides:¹¹⁷ "That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof."

¶ D. CONSTITUTIONALITY OF THE STATUTE MAKING RECEIVING CARRIER LIABLE FOR LOSS OR DAMAGE ON INTERSTATE TRAFFIC.

See *Section 309, ante*.

§ 434. Assignability of Overcharge Claims.

Claims for damages to recover overcharges, under Sections 8 and 9 of the Interstate Commerce Law, constitute property rights, which may be assigned so as to convey the beneficial interest therein to the assignee. The assignment thereof is not prohibited by any of the provisions of the Interstate Commerce Act, nor is it forbidden by any considerations of public policy.¹¹⁸

§ 435. Benefit of Reparation Order extends to All Like Shipments.

No carrier may pay any refund from its published tariff charges save with the specific authority of the Commission. When an informal or formal reparation order has been made by the Commission the principle upon which it is based extends to all like shipments, but no refunds may be made by

¹¹⁶ *Latta v. C. St. P. M. & O. Ry. Co.* (1909), 172 Fed. Rep. 850.

¹¹⁷ See note 114, *supra*.

¹¹⁸ *Edmunds v. Ills. Cent. R. Co.* (1897), 80 Fed. Rep. 78.

the carrier upon such shipments except upon specific authority from the Commission.¹¹⁹

§ 436. Delivering Carrier must investigate before paying Claims.

A delivering carrier cannot accept the authority of a connecting line and thus shield itself from responsibility in paying claims, but must investigate and ascertain the lawful rates and allow the claims or not upon the basis of its own investigations.¹²⁰

§ 437. Adjustment of Claims on Presentation.

It is not a proper practice for railroad companies to adjust claims immediately on presentation and without investigation. The fact that shippers may give a bond to secure repayment in case, upon subsequent examination, the claims prove to have been improperly adjusted does not justify the practice.¹²¹

§ 438. Liability of Members of Traffic Association for Unreasonable Rates Charged.

If railway companies engaged in the transportation of traffic from one territory voluntarily enter into an association with railway companies engaged in the transportation of similar traffic from another territory to a common market, for the purpose, among others, of a mutual adjustment of rates over their respective lines, and in pursuance of this purpose as members of such association agree to and maintain rates over their own lines higher than are reasonable and the relation thus established between the rates from the two territories, respectively, is unjustly prejudicial to the former and unduly preferential to the latter, this is a violation of the first paragraph of Section 3 of the Act to Regulate Commerce, for which, whether or not there be a joint liability under said Act of the two systems of carriers, there is at least a several liability on the part of those serving the territory injuriously affected.¹²²

¹¹⁹ Rule 49, Con. Rul. Bul. No. 4 (March 10, 1908).

¹²⁰ Rule 15, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

¹²¹ Rule 68, Con. Rul. Bul. No. 4 (May 4, 1908).

¹²² Freight Bureau of Cincinnati Chamber of Commerce v. C. N. O. & T. P. Ry. Co. (1894), 4 I. C. R. 592; 6 I. C. C. R. 195.

§ 439. Parties entitled to Reparation.

The Commission is confined in the making of awards for reparation to the injury or damage sustained by those who are the real and substantial parties in interest in the transaction in which such transportation charges have been assessed. The reparation is due to the person who has been required to pay the excessive charges as the price of transportation and who was the true owner of the property transported during the period of transportation.¹²³

§ 440. Limitation of Actions before the Commission.

See *Section 798, post.*

§ 441. Parties to Action for Damages.

See *Section 790, Paragraph A, post.*

§ 442. Rules of Procedure before the Commission.

See *Section 806, post.*

§ 443. Order of Commission awarding Reparation.

See *Section 797, post.*

§ 444. Change of Rate while Shipment was on the Ocean.

A shipment of linoleum left Hamburg on July 4, at which time there was in effect a published through rate to San Francisco via New Orleans of \$1.10. When the shipment reached New Orleans the through rate had been canceled, leaving in effect a local rate from New Orleans to San Francisco of 90 cents. Upon application for permission to refund down to the \$1.10 through rate: *Held*, That the application must be denied.¹²⁷

¹²³ Nicola, *Stone & Myers v. L. & N. R. R. Co.* (1908), 14 I. C. C. R. 199.

¹²⁷ Rule 111, Con. Rul. Bul. No. 4 (Nov. 12, 1908).

§ 445. Remedy for Wrongs which occurred prior to the Act.

The Act to Regulate Commerce does not afford a remedy for transactions which occurred before it took effect.¹²⁸

The Interstate Commerce Commission has no authority to call a railroad company to account for any wrong of which such company may have been guilty prior to April 5, 1887, when the Act went into effect.¹²⁹

§ 446. Special Reparation on Informal Complaints.

See *Section 782, post, Paragraph C.*

§ 447. Penalty for Shipper obtaining or attempting to obtain Payment for Damages, Allowance or Refund by False Representation.

See *Section 761, post.*

¹²⁸ *Ottinger v. Southern Pacific Co.* (1887), 1 I. C. R. 607; 1 I. C. C. R. 144.

¹²⁹ *Holbrook et al. v. St. P. M. & M. P. Co.* (1887), 1 I. C. R. 323, 1 I. C. C. R. 102.

CHAPTER XXIX.

TRANSPORTATION OF EXPLOSIVES.

SECTION

- 448. Unlawful to transport Explosives with Passengers.
- 449. Unlawful to transport Liquid Nitroglycerin, Fulminate in Bulk, or other like Explosives.
- 450. Excepted Classes of Explosives that may be Lawfully Transported with Passengers.
- 451. Interstate Commerce Commission authorized to formulate Regulations for the Safe Transportation of Explosives.
- 452. Packages containing Explosives must be marked.
- 453. Concealing Character of Packages containing Explosives Declared Unlawful.
- 454. Penalties for Violations of the Law.
- 455. Regulations for the Transportation of Explosives.

§ 448. Unlawful to transport Explosives with Passengers.

The statute provides that it shall be unlawful to transport, carry, or convey, any dynamite, gunpowder, or other explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place, in any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof and a place in any other State, Territory, or District of the United States or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire.¹

¹ Transportation of Explosives Act March 4, 1909, Section 232.

It should be noted that this statute applies to any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire.

This is a step toward conferring jurisdiction upon the Interstate Commerce Commission over water carriers.

§ 449. Unlawful to transport Liquid Nitroglycerin, Fulminate in Bulk, or other like Explosives.

The statute makes it unlawful to transport, carry, or convey, liquid nitroglycerin, fulminate in bulk in dry condition, or other like explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States or between a place in one State, Territory, or District of the United States, or a place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.²

§ 450. Excepted Classes of Explosives that may be Lawfully Transported with Passengers.

The statute provides that it shall be lawful to transport on any vessel or vehicles, as stated in the preceding section, small-arms, ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each and not exceeding twenty samples at one time in a single vessel or vehicle; but provides that such samples shall not be carried in that part of a vessel or vehicle which is intended for the transportation of passengers for hire. The statute further provides that nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipped vessels or vehicles.³

§ 451. Interstate Commerce Commission authorized to formulate Regulations for the Safe Transportation of Explosives.

The statute authorizes the Interstate Commerce Commission

² Explosives Act. Section 234.

³ See note 1, *supra*.

to formulate regulations for the safe transportation of explosives, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land.⁴ The statute further provides that the Commission of its own motion, or upon application made by any interested party, may make charges or modifications in such regulations, made desirable by new information or altered conditions.⁵ The law states that such regulations shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport; that such regulations, as well as all changes or modifications thereof, shall take effect ninety days after their formulation and publication by the Commission and shall be in effect until reversed, set aside, or modified.⁶

In the exercise of the above authority the Commission formulated and published on January 15, 1910, a set of rules and regulations covering the transportation of explosives as set forth in *Section 455, post*.

§ 452. Packages containing Explosives must be marked.

The law provides that every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall be plainly marked on the outside thereof the contents thereof.⁷

§ 453. Concealing Character of Packages containing Explosives Declared Unlawful.

The statute provides that it shall be unlawful for any person to deliver, or cause to be delivered, to any common carrier engaged in interstate or foreign commerce by land or water, for interstate or foreign transportation, or to carry upon any vessel or vehicle engaged in interstate or foreign commerce,

⁴ Explosives Act. Section 233.

⁵ Explosives Act. Section 233.

⁶ *Ibid*.

⁷ Explosives Act. Section 235.

any explosive, or other dangerous article, under any false or deceptive marking, description, invoice, shipping order or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery is made.⁸

§ 454. Penalties for Violations of the Law.

See *Section 781, post.*

§ 455. Regulations for the Transportation of Explosives.

[The following comprise all the regulations which have been prescribed by the Commission, the paragraphs having been numbered to correspond with the rules and regulations of the American Railway Association.]

GENERAL NOTICE.

As the use of certain explosives is essential to various business activities throughout the country it is the duty of interstate railroad carriers to transport such explosives under proper regulations. It is also the duty of each such carrier to make the prescribed regulations effective and to thoroughly instruct its employes in relation thereto. It is the duty of express companies to transport under proper regulations samples of explosives for laboratory examination, as authorized by Section 232 of the Act of Congress approved March 4, 1909 (*see Appendix No. 26*). When the explosives specified in this section are lawfully carried in an express or baggage car in the presence of an employe of the company, it will not be necessary to placard this car as prescribed herein for a freight car containing similar lading.

The Commission will make further provision as occasion may require for new explosives not included in or covered by the following regulations.

GENERAL RULES.

A. Unless specifically authorized by these regulations, explosives must not be packed in the same outside package with each other or with other articles. Explosives, when offered

⁸ See note 7, *supra*.

for shipment by rail, must be in proper condition for transportation and must be packed, marked, loaded, stayed, and handled while in transit in accordance with these regulations. All packages of less than carload shipments must also be plainly marked on the outer covering or boxing (outside package) with the name and address of consignee. Empty boxes previously used for high explosives are dangerous and must not be again used for shipments of any character. Empty boxes which have been used for the shipment of other explosives than high explosives must have the old marks thoroughly removed before being accepted for the shipment of other articles. Empty metal kegs which have been used for the shipment of black powder not contained in an interior package must not be used for shipment of any explosive.

B. Explosives, except such as are forbidden (see pars. 1501 and 1531 to 1536) must be received for transportation by railroads engaged in interstate commerce, provided the following regulations are complied with, and provided their method of manufacture and packing, so far as it affects safe transportation, is open to inspection by a duly authorized representative of the initial carrier or of the Bureau for the Safe Transportation of Explosives and Other Dangerous Articles, of the American Railway Association. Shipments of explosives that do not comply with these regulations will not be received. Shipments offered by the United States Government may be packed, including limitations of weight, as required by its regulations.

C. Before any shipment of explosives destined to points beyond the lines of the initial carrier is accepted from the shipper, the initial carrier must ascertain that the shipment can go forward via the route designated, and that delivery can be made at destination. To avoid unnecessary delays, arrangements must be made to furnish this information promptly to initial carrier. Shipments offered by connecting lines must be received subject to these regulations.

TESTS FOR STRENGTH OF PACKAGE.

D. Packages receive their greatest stresses in a direction parallel to the length of the car and must, therefore, be loaded

so as to offer their greatest resistance in this direction. Cleats or handles, when prescribed for packages, must be so placed as not to interfere with close packing lengthwise in the car.

E. When inexplusive material of equal weight is substituted (sand for a granular explosive, dummy cartridges for high-explosive cartridges), and the outside package is dropped on its end onto a foundation of solid brick or concrete from a height of *four* feet, the outside package must not open, nor rupture, nor must any portion of the contents escape therefrom.

F. In addition to standing the test in paragraph E, the design and construction of packages must be such as to prevent the occurrence in individual packages of defects that permit leakage of their contents under the ordinary conditions incident to transportation. The results of experience, gained by an examination of packages on arrival at destination, must be recorded by the Bureau of Explosives, to the end that further use of any particular kind of package, shown by experience to be inefficient, may be prohibited by the Commission, even if it should stand the drop test prescribed by paragraph E.

G. Violations of these regulations discovered in cars containing explosives, or in the loading or staying of packages, must be corrected before forwarding the car. A report of all serious violations, with a statement of apparent cause (such as defective packing, improper staying, rough treatment of car, etc.), must be made by the carrier to the chief inspector of the Bureau of Explosives.

GROUPING.

H. For transportation purposes, all explosives are divided into the following groups:

1. Forbidden explosives.
2. Black powder.
3. High explosives.
4. Smokeless powders.
5. Fulminates.
6. Ammunition.
7. Fireworks.

Section I.—INFORMATION AND DEFINITIONS.**Group 1.—Forbidden Explosives.**

See paragraphs 1531 to 1536.

1501. The following are forbidden explosives:

- (a) **Liquid Nitroglycerin.**
- (b) **Dynamite** containing over 60 percent of nitroglycerin (except gelatine dynamite).
- (c) **Dynamite** having an unsatisfactory absorbent, or one that permits leakage of nitroglycerin under any conditions liable to exist during transportation or storage.
- (d) **Nitrocellulose** in a dry condition, in quantity greater than ten (10) pounds in one exterior package. (See pars. 1557 to 1560.)
- (e) **Fulminate of Mercury in Bulk** in a dry condition and fulminates of all other metals in any condition.
- (f) **Fireworks** that combine an explosive and a detonator or blasting cap. (See pars. 1515 and 1644.)

Group 2.—Black Powder.

See paragraphs 1541 to 1545.

1502. Black (or brown) powder embraces all explosives having a composition similar to that of ordinary gunpowder, such as carbonaceous material, sulphur, and a nitrate of sodium or potassium. This group includes rifle, sporting, blasting, cannon and the prismatic powders.

Group 3.—High Explosives.

See paragraphs 1551 to 1560.

1503. High explosives are all explosives more powerful than ordinary black powder, except smokeless powders and fulminates. Their distinguishing characteristic is their susceptibility to detonation by a commercial detonator, or blasting cap. Many high explosives are sensitive to percussion and to friction. Examples of high explosives are the dynamites, picric acid, picrates, chlorate powders, and nitrate of ammonia powders.

Group 4.—Smokeless Powders.

See paragraphs 1571 to 1579.

1504. Smokeless powders are those explosives from which there is little or no smoke when fired. The group consists of smokeless powder for cannon and smokeless powder for small arms. Smokeless powder for cannon used in the United States at the present time consists of a nitrocellulose colloid, and is safe to handle and transport. Smokeless powders for small arms may consist of nitrocellulose, nitrocellulose combined with nitroglycerin, pierate mixtures, or chlorate mixtures.

Group 5.—Fulminate.

See paragraphs 1591 to 1593.

1505. This includes **Fulminate of Mercury** in bulk form—that is, not made up into percussion caps, detonators, blasting caps, or exploders.

Group 6.—Ammunition.

See paragraphs 1601 to 1622.

1506. **Small-Arms Ammunition** consists usually of a paper or metallic shell, the primer, powder charge, and projectile, the materials necessary for one firing being all in one piece, such as is used in sporting or fowling pieces, or in rifle, pistol practice, etc.

1507. **Ammunition for Cannon** embraces all fixed or separate-loading ammunition packed in a single package in which the projectile weighs one pound or over, and is usually transported only for Government use. When the component parts are packed in separate outside packages, such packages will be shipped as smokeless powder for cannon, explosive projectiles, empty projectiles, primers, or fuzes. Igniters composed of black powder may be attached to packages in shipments of smokeless powder.

1508. **Explosive Projectiles**, or loaded shells for use in cannon, are not liable to be exploded except by fire of considerable intensity, and the flying fragments would then be very dangerous.

1509. **Detonators** is the technical name for articles such as blasting caps, the use of which is to cause explosions of a high order, or "detonations." This means the instantaneous conversion of the entire explosive into gas instead of the gradual conversion known as "combustion." Dynamite "detonates" and smokeless powder for cannon "burns."

1510. **Blasting Caps** contain from 5 to 50 grains of dry fulminate of mercury, or a similar substance, packed in a thin copper cup and fired by a slow-burning safety fuze. When a small "bridge" of fine wire is embedded in the fulminate, held by a sulphur cast, and arranged to fire the fulminate by heating the bridge by means of an electric current, the cap is called an "electric blasting cap" or "electric cap," or "electric exploder."

1511. **Detonating Fuzes** are used to detonate the high explosive bursting charges of projectiles or torpedoes. In addition to a powerful detonator they may contain several ounces of a high explosive, such as picric acid or dry nitrocellulose, all assembled in a heavy steel envelope, the flying fragments of which, in case of explosion, would be very dangerous. From their careful design, manufacture, and packing detonating fuzes are not liable to be exploded in transportation except by fire of considerable intensity.

1512. **Primers, Percussion and Time Fuzes** are devices to ignite the black powder bursting charges of projectiles, or the powder charges of ammunition. For small-arms ammunition the primers are usually called "small-arm primers" or "percussion caps."

Group 7.—Fireworks.

See paragraphs 1641 to 1647.

1513. **Fireworks** include everything that is designed and manufactured, primarily, for the production of pyrotechnic effects. They consist of common fireworks and special fireworks.

1514. **Common Fireworks** include all that depend principally upon nitrates to support combustion and not upon chlor-

ates; that contain no phosphorus and no high explosive sensitive to shock and friction; that produce their effect through color display rather than by loud noises. If noise is the principal object, the units must be small and of such nature and manufacture that they will explode separately and harmlessly, if at all, when one unit is ignited in a packing case. They must not be designed for ignition by shock or friction. Examples are Chinese firecrackers, Roman candles, pinwheels, colored fires, serpents, railway fusees, flash powders, etc.

1515. **Special Fireworks** include all that contain any quantity of red or white phosphorus, a fulminate, or other high explosive sensitive to shock or friction; or that contain units of such size that the explosion of one while being handled would produce a serious injury; or that require a special appliance or tool, mortar, holder, etc., for their safe use; or that may be exploded *en masse* in their packing cases; or that are intended for or may be ignited or exploded by shock or friction. Examples are giant firecrackers, bombs, salutes, toy torpedoes and caps, rockets, ammunition pellets fired in a special holder, railway torpedoes, etc.

Section II.—CONDITIONS OF ACCEPTANCE AND SHIPMENT OF PACKAGES.

Group 1.—Forbidden and Condemned Explosives.

1531. Forbidden explosives, as defined in paragraph 1501, and explosives condemned by the Bureau of Explosives, must not be accepted for shipment.

1532. Should any package of high explosives when offered for shipment show excessive dampness or be moldy or show outward signs of any oily stain or other indication that absorption of the liquid part of the explosive is not perfect or that the amount of the liquid part is greater than the absorbent can carry, the packages must be refused in every instance. The shipper must substantiate any claim that a stain is due to accidental contact with grease, oil or similar substance. In case of doubt, the package must be rejected. A shipment of leaking dynamite is liable to cause a disaster in spite of care-

ful handling; and storage, especially in warm and damp magazines, tends to cause leakage. Carriers must, for these reasons, examine with more than usual care all packages that have been stored or are offered for shipment during the summer months.

REPACKING OF DYNAMITE.

1533. Condemned dynamite must not be repacked and offered for shipment unless the repacking is done by a competent person in the presence and with the consent of a local inspector, or with the written authority of the chief inspector, of the Bureau of Explosives.

DISPOSITION OF INJURED, CONDEMNED, AND STRAY PACKAGES.

1534. Packages found injured or broken in transit may be recoopered when this is evidently practicable and not dangerous. A broken box of dynamite that can not be recoopered should be reenforced by stout wrapping paper and twine, placed in another strong box, and surrounded by dry, fine sawdust, or dry and clean cotton waste, or elastic wads made from dry newspaper. A ruptured can or keg should be inclosed in a grain bag of good quality and boxed or crated. Injured packages thus protected and properly marked may be forwarded.

1535. Condemned packages of leaking dynamite should (1) be returned immediately to shipper if at point of shipment; or (2) disposed of to a dealer in dynamite or other person who is competent and willing to remove them from railway property, if leakage is discovered while in transit; or (3) removed immediately by consignee if shipment is at destination.

When disposition can not be made as above, the leaking boxes must be packed in other boxes large enough to permit, and the leaking box must be surrounded by at least 2 inches of dry, fine sawdust or dry and clean cotton waste, and be stored in station magazine or other safe place, until arrival of the local inspector or other authorized person to superintend the destruction of the condemned material.

1536. When name and address of consignee are known, a

stray shipment must be forwarded to its destination by the most practicable route, provided a careful inspection shows the packages to be in proper condition for safe transportation. Revenue and card waybills must be prepared and on them must be written or stamped "Stray shipment, inspected at —— station, —— railroad, —— 19 —," except in cases where authority can be obtained by wire from the original forwarding station to stamp these waybills "Shippers' certificate file," etc. (See par. 1668.)

When a package in a stray shipment is not in proper condition for safe transportation (see par. 1534), or when name and address of consignee are unknown, disposition will be made as prescribed by paragraph 1535.

Group 2.—Black Powder.

1541. **Packing.**—Packages containing less than twelve and a half ($12\frac{1}{2}$) pounds of rifle, sporting, blasting, or cannon powders must be inclosed in a tight box, so that the filling holes of the packages will be up, and the boxes must be marked on top, as prescribed by paragraph 1544.

1542. Twelve and a half ($12\frac{1}{2}$) pounds or over of black or brown powder must be packed in packages that comply with General Rules D, E, and F. Kegs less than 9 inches long must be boxed, as prescribed by paragraph 1541.

1543. **Weight.**—Packages must not weigh over 150 pounds gross.

1544. **Marking.**—Each outside package must be plainly marked, stamped, or stenciled to show the kind, "BLACK" or "BROWN,"⁹ and the use, "BLASTING," "RIFLE," "CANNON," "MORTAR," etc., as "BLACK BLASTING POWDER," "BLACK RIFLE POWDER," etc. Additional marks, trade names, etc., may appear if desired by shipper.

1545. **Car.**—A car containing shipments of black powder in any quantity must be certified and placarded as prescribed by pars. 1661 and 1666.

⁹ Occasional shipments of "brown powder," having the composition of black powder, are made by or for the United States Government.

Group 3.—High Explosives.

1551. High explosives consisting of a liquid mixed with an absorbent material must have the absorbent (wood pulp or similar material) in sufficient quantity and of satisfactory quality, properly dried at the time of mixing; nitrate of soda must be dried at the time of mixing to less than 1 percent of moisture; and the ingredients must be uniformly mixed so that the liquid will remain thoroughly absorbed under the most unfavorable conditions incident to transportation.

1552. Explosives containing nitroglycerin must have uniformly mixed with the absorbent material a satisfactory antacid which must be in quantity sufficient to have the acid neutralizing power of an amount of magnesium carbonate equal to 1 percent of the nitroglycerin.

1553. **Packing.**—High explosives, containing more than 10 percent of nitroglycerin, must be made into cartridges not exceeding 4 inches in diameter, or 8 inches in length (does not apply to gelatine dynamite), and must not be packed in bags or sacks. Bags or sacks of high explosives, containing not more than 10 percent of nitroglycerin and not over 12½ pounds each of explosive, will be accepted as cartridges, but these bags must be strong and must be placed in the box with filling ends up. The covering of all cartridges, consisting of paper or other material, must be strong and so treated that it will not absorb the liquid constituent of the explosive.

1554. All boxes in which cartridges containing nitroglycerin are packed must be lined with a suitable material that is impervious to liquid nitroglycerin. Cardboard cartons closed at the bottom and made of strong and flexible material that is impervious to nitroglycerin form a satisfactory lining. At least one-quarter of an inch of dry sawdust or similar material must be spread over the bottom of the box before inserting the cartridges, and all the vacant space in the top must be filled with this material. The cartridges, except the bags or sacks authorized in paragraph 1553, must be so arranged in the boxes that when they are transported with the boxes top side up all cartridges will lie on their sides and never on their ends.

1555. The boxes must be strong (General Rules D, E, and F), the lumber throughout must be sound and free from loose knots and, when made with lock corners, must not be less than one-half inch in thickness. When nailed boxes are used, the ends must not be less than 1 inch, nor the sides, top, and bottom less than one-half inch in thickness. The limits for thickness refer to the finished box and not to the undressed lumber.

1556. High explosives, containing no explosive liquid ingredient, and not having, with their normal percentage of moisture, a sensitiveness to percussion greater than measured by the blow delivered by an 8-pound weight dropping from a height of five (5) inches on a compressed pellet of the explosive, three-hundredths of an inch in thickness and two-tenths of an inch in diameter, held rigidly between hard steel surfaces, as in the standard impact testing apparatus of the Bureau of Explosives, will be accepted for shipment when securely packed in bulk in tight packages that comply with General Rules D, E, and F. These explosives may also be packed in cartridges, and must be so packed when their sensitiveness is greater than the above limit.

1557. **Dry Nitrocellulose.**—Inside packages containing not more than 1 pound each of nitrocellulose, wrapped in strong paraffined paper, or other suitable spark-proof material, will be accepted for shipment if securely packed in an outside package that complies with General Rules D, E, and F, and is marked as prescribed in paragraph 1559. Outside packages must not contain more than ten (10) pounds of dry nitrocellulose.

1558. **Weights.**—High explosives containing an explosive liquid ingredient must not exceed seventy-five (75) pounds, gross weight, in one outside package.

High explosives containing no liquid explosive ingredient as defined in paragraph 1556, must not exceed 125 pounds, gross weight, in one outside package.

The gross weight of an outside package containing dry nitrocellulose, packed as defined in paragraph 1557, must not exceed 35 pounds.

1559. **Marking.**—The boxes must be plainly marked on top and on one side or end “HIGH EXPLOSIVE—DANGEROUS.” The top must be marked “THIS SIDE UP.”

1560. **Car.**—For shipments of high explosives in any quantity, the car must be certified and placarded as prescribed by paragraphs 1661 and 1666.

Group 4.—Smokeless Powder.

SMOKELESS POWDER FOR CANNON.

1571. **Packing.**—Smokeless powder for cannon must be packed in tight boxes free from loose knots and cracks, or in kegs, that comply with General Rules D, E, and F.

1572. **Weight.**—Packages must not weigh over 152 pounds gross.

1573. **Marking.**—Each package must be plainly marked on top “SMOKELESS POWDER FOR CANNON.”

1574. **Car.**—Smokeless powder for cannon may be shipped in any box car in good condition. The car must be placarded “INFLAMMABLE” as prescribed by paragraph 1663.

SMOKELESS POWDER FOR SMALL ARMS.

1575. **Packing.**—Packages of less than nine (9) pounds of smokeless powder for small arms must be inclosed in a tight box so that the filling hole of each inside package will be up, and the box must be marked on top as prescribed by paragraph 1578.

1576. Quantities of 9 pounds or over must be placed in packages that comply with General Rules D, E, and F. Kegs less than 9 inches long must be boxed as prescribed by paragraph 1541.

1577. **Weight.**—Packages weighing over 31 pounds gross will not be received unless packed under the supervision of and shipped for the use of the United States Government.

Packages weighing not over 30 pounds gross each may be inclosed in an outside package, in which case the gross weight must not exceed 150 pounds.

1578. **Marking.**—Each outside package must be plainly marked on top “SMOKELESS POWDER FOR SMALL ARMS.”

1579. **Car.**—Shipments of smokeless powder for small arms in any quantity require a car to be certified and placarded, as prescribed by paragraphs 1661 and 1666.

Group 5.—Fulminate.

1591. **Packing.**—Fulminate of mercury in bulk must contain, when packed, not less than twenty-five (25) percent of water, and must in this wet condition be placed in a bag made of heavy cotton cloth of close mesh equal in quality and weight to the cotton twill used for pockets in high-grade clothing. There must be placed inside the bag and over the fulminate a cap of the same cloth and of the diameter of the bag, and the bag must be tied securely and placed in a strong grain bag, which must in turn be tied securely and packed in the center of a cask or barrel in good condition and of the kind used for shipment of alcohol. The grain bag must not contain more than 150 pounds dry weight of fulminate, and it must be surrounded on all sides by tightly packed sawdust not less than 6 inches thick. The cask or barrel must be lined with a heavy close-fitting jute bag closed by secure sewing to prevent escape of sawdust. After the barrel is properly coopered it must be filled with water, the bung sealed; the barrel must be inspected carefully and all leaks stopped.

1592. **Marking.**—Each cask, or barrel, must be plainly marked “WET FULMINATE OF MERCURY—DANGEROUS.”

1593. **Car.**—A car containing fulminate in any quantity must be certified and placarded as prescribed by paragraphs 1661 and 1666.

Group 6.—Ammunition.

SMALL-ARMS AMMUNITION.

1601. **Packing.**—Small-arms ammunition must be packed in pasteboard or other boxes, and these pasteboard or other boxes must be packed in strong outside boxes.

Small-arms ammunition in pasteboard or other boxes and in quantity not exceeding a gross weight of 75 pounds may be packed with nonexplosive and noninflammable articles and

with small-arms primers or percussion caps (see par. 1619), provided the shipment is certified (see par. 1668), and the outside package is marked as prescribed in paragraph 1602.

1602. **Marking.**—Each outside package or case must be plainly marked "SMALL-ARMS AMMUNITION."

1603. **Car.**—Small-arms ammunition may be shipped in any box car which is in good condition, without the placard prescribed by paragraph 1663.

AMMUNITION FOR CANNON.

1604. **Packing.**—Ammunition for cannon must be well packed and properly secured in strong boxes provided with cleats or handles.

1605. **Marking.**—Each outside package must be plainly marked "AMMUNITION FOR CANNON—EXPLOSIVE PROJECTILES," or "AMMUNITION FOR CANNON—EMPTY PROJECTILES," according as the projectiles do, or do not, contain a bursting charge.

1606. **Car.**—A car containing ammunition for cannon with explosive projectiles must be certified and placarded as prescribed by paragraphs 1661 and 1666. This is not required when projectiles are empty, but in this case cars must be protected by "INFLAMMABLE" placard, as prescribed by paragraph 1663.

EXPLOSIVE PROJECTILES.

1607. **Packing.**—Explosive projectiles must be packed in strong boxes, and each projectile must be properly secured. When the gross weight does not exceed 150 pounds the box must be provided with cleats or handles.

1608. **Weight.**—The gross weight of a box containing more than one projectile must not exceed 150 pounds.

1609. **Marking.**—Each exterior package must be plainly marked "EXPLOSIVE PROJECTILE" or "EMPTY PROJECTILE." No restrictions other than proper marking are necessary for the shipment of empty projectiles.

1610. **Car.**—For explosive projectiles in any quantity the car must be certified and placarded as prescribed in paragraphs 1661 and 1666.

BLASTING CAPS.

1611. **Packing.**—Blasting caps contain such a sensitive and dangerous explosive that very efficient packing is necessary.

Blasting caps must be packed in strong tin receptacles in which they must fit snugly, and the caps must be closely secured by cleats projecting from a plate of suitable elastic material placed inside the box and over the caps. Not more than 100 blasting caps must be packed in a single tin box. All separate tin boxes must then be packed snugly in paper or pasteboard cartons, and these must be packed in an inside box made of sound lumber not less than three-eighths of an inch in thickness (except in cases where it is made of hardwood with reenforced corners, and the lid securely fastened down with at least four strong wires bound around the box, in which case the lumber must not be less than three-sixteenths of an inch in thickness). This inside wooden box must then be packed in an outside box made of sound lumber not less than 1 inch in thickness and free from loose knots and cracks. Tightly-packed sawdust or excelsior, at least 1 inch thick at all points, must separate the inside from the outside wooden box. More than 20,000 blasting caps must not be placed in one outside package.

If the outside box is to contain not more than 5,000 caps, the inside box may be omitted, and the outside box may be made of half-inch lumber; but in this case the tin boxes in pasteboard cartons must be separated from the outside box at all points by at least 1 inch of tightly-packed sawdust or excelsior. One tin box containing not more than 100 caps may be packed with safety fuze. (Par. 1648.)

Electric blasting caps must be packed in pasteboard cartons containing not more than 50 caps each. These cartons must be packed in a wooden box made of lumber not less than one-half inch in thickness.

All boxes containing more than 5,000 blasting caps or weighing more than 50 pounds, gross weight, must be provided with cleats or handles, and all lids must be securely fastened.

1612. **Weight.**—The gross weight of an outside package con-

taining blasting caps or electric blasting caps must not exceed 150 pounds.

1613. **Marking.**—Each outside package must be plainly marked “BLASTING CAPS—HANDLE CAREFULLY,” or “ELECTRIC BLASTING CAPS—HANDLE CAREFULLY.” In addition each box must bear the marking “DO NOT STORE OR LOAD WITH ANY HIGH EXPLOSIVE.”

1614. **Car.**—Certificate and placard as prescribed by paragraphs 1661 and 1666 are required for shipments of blasting caps in any quantity, except that a shipment of not more than 100 blasting caps may be transported in a box car in good condition without car certificate or placard.

DETONATING FUZES.

1615. **Packing.**—Detonating fuzes must be packed in strong, tight boxes provided with cleats or handles, and each fuze must be well secured.

1616. **Weight.**—The gross weight of one outside package must not exceed 150 pounds.

1617. **Marking.**—Each outside package must be plainly marked “DETONATING FUZES—HANDLE CAREFULLY.”

1618. **Car.**—A car containing detonating fuzes in any quantity must be certified and placarded as prescribed in paragraphs 1661 and 1666.

PRIMERS, PERCUSSION AND TIME FUZES.

1619. **Packing.**—Primers, percussion and time fuzes must be packed in strong, tight boxes, with special provision for securing individual packages of primers and fuzes against movement in the box.

Small-arms primers, containing anvils, must be packed in cellular packages with partitions separating the layers and columns of primers, so that the explosion of a portion of the primers in the completed shipping package will not cause the explosion of all of the primers.

Percussion caps may be packed in metal or other boxes containing not more than 500 caps, but the construction of the cap, and the kind and quantity of explosives in each, must be

such that the explosion of a part of the caps in the completed shipping package will not cause the explosion of all of the caps.

Small-arms primers and percussion caps may form a part of the gross weight of 75 pounds of small-arms ammunition that may be packed with other articles as authorized by paragraph 1601.

1620. **Weight.**—The gross weight of one outside package must not exceed 150 pounds.

1621. **Marking.**—Each outside box must be plainly marked “SMALL-ARMS PRIMERS—HANDLE CAREFULLY,” or “PERCUSSION CAPS — HANDLE CAREFULLY,” or “CANNON PRIMERS—HANDLE CAREFULLY,” or “COMBINATION PRIMERS—HANDLE CAREFULLY,” or “PERCUSSION FUZES—HANDLE CAREFULLY,” or “COMBINATION FUZES—HANDLE CAREFULLY,” etc.

1622. **Car.**—Primers, percussion and time fuzes may be shipped in a box car which is in good condition without the placard prescribed by Par. 1663.

Group 7.—Fireworks.

COMMON FIREWORKS.

1641. **Packing.**—Common fireworks must be in a finished state, exclusive of mere ornamentation, as supplied to the retail trade, and must be securely packed in strong, tight, spark-proof boxes.

1642. **Marking.**—Each outside package must be plainly marked “COMMON FIREWORKS—KEEP FIRE AWAY.”

1643. **Car.**—Common fireworks may be shipped in a box car which is in good condition (par. 1663), but they must not be loaded in the same car with explosives or with inflammable articles (par. 1680).

A car containing any quantity of common fireworks must be protected by the “INFLAMMABLE” placard. (See par. 1663.)

SPECIAL FIREWORKS.

1644. **Packing.**—Special fireworks must be in a finished state, exclusive of mere ornamentation, as supplied to the re-

tail trade, and must not contain a blasting cap or detonator. (See par. 1501 (f).)

They must be securely packed in strong, tight, spark-proof boxes, that comply with General Rules D, E, and F, provided with cleats or handles.

1645. **Weight.**—The gross weight of one outside package containing special fireworks must not exceed 200 pounds.

1646. **Marking.**—Each outside package, if it contains special or a mixture of common and special fireworks, must be plainly marked "SPECIAL FIREWORKS—HANDLE CAREFULLY—KEEP FIRE AWAY."

1647. **Car.**—Special fireworks may be shipped in any box car which is in good condition (par. 1663), but they must not be loaded in the same car with explosives or inflammable articles (par. 1680). A car containing any quantity of special or other fireworks must be protected by the "INFLAMMABLE" placard. (See par. 1663.)

SAFETY FUZE AND SAFETY SQUIBS.

1648. Safety fuze and safety squibs, when properly boxed or packed in barrels, may be accepted for shipment and loaded in any car with any other kind of an explosive or inflammable substance or with other freight. If blasting caps are packed with safety fuze the outside package must be marked as prescribed by paragraph 1613. (See par. 1611.)

Section III.—SELECTION AND PREPARATION OF CARS.

1661. The safe transportation of explosives depends very largely upon the kind and condition of the car in which they are loaded.

For the transportation of—

Black or brown powder,

High explosives,

Smokeless powder for small arms,

Fulminates,

Blasting caps,

Electric blasting caps,

Ammunition for cannon—explosive projectiles,

Explosive projectiles, or
Detonating fuzes,

only certified and placarded box cars may be used. (See pars. 1662 and 1666.)

1662. Certified cars must be inspected inside and out and must conform to the following specifications:

(a) Not less than 60,000 pounds capacity. Steel under-frame box cars or other box cars with friction draft gear should be used when available. On narrow-gauge and other railroads, all of whose freight cars are of less than 60,000 pounds capacity, explosives may be transported in cars of less than that capacity, provided the cars of greatest capacity and strength are used for this purpose.

(b) Must be equipped with air brakes and hand brakes in condition for service.

(c) Must have no loose boards or cracks in the roof, sides, or ends.

(d) The doors must shut so closely that no sparks can get in at the joints, and, when necessary, they must be stripped. The stripping for flush doors should be on the inside and nailed to the door frame, where it will form a shoulder against which the closed door is pressed. The opening under the doors should be similarly closed.

(e) The journal boxes and trucks must be carefully examined and put in such condition as to reduce to a minimum the danger of hot boxes or other failure necessitating the setting off of the car before reaching destination. The lids or covers of journal boxes must be in place.

(f) The car must be carefully swept out before it is loaded. Holes in the floor or lining must be repaired and special care taken to have no projecting nails or bolts or exposed pieces of metal which may work loose or produce holes in packages of explosives during transit.

(g) When the car is to be fully loaded with explosives or when explosives are loaded over exposed draftbolts or kingbolts, these bolts must have short pieces of solid, sound wood (2-inch plank) spiked to the floor over them to prevent possibility of their wearing into the packages of explosives.

(h) The roof of the car must be carefully inspected from the outside for decayed spots, especially under or near the running board, and such spots must be covered to prevent their holding fire from sparks. A car with a roof generally decayed, even if tight, must not be used.

(i) When explosives are to be carried in a "way car"¹⁰ one should be selected with flush doors in good condition or with doors fitting so tightly that stripping will not be necessary.

(k) The carrier must have car examined to see that it is properly prepared, and must have a "Car Certificate" signed in triplicate upon the prescribed form (par. 1665) before permitting the car to be loaded.

(l) Cars not in proper condition, as above specified, must not be furnished to the shipper or used for the transportation of explosives.

1163. Carload or less than carload lots of—

Small-arms ammunition,

Primers,

Percussion fuzes,

Time or combination fuzes,

Ammunition for cannon—empty projectiles,

Ammunition for cannon—without projectiles,

Smokeless powder for cannon, or

Fireworks,

may be loaded in any box car which is in good condition, into which sparks cannot enter, and whose roof is not in danger of taking fire through unprotected decayed wood. These cars may be used without being certified and placarded as prescribed by paragraphs 1661 and 1666; but cars containing—

Ammunition for cannon—empty projectiles,

Ammunition for cannon—without projectiles,

Smokeless powder for cannon, or

Fireworks,

must be protected by the "INFLAMMABLE" placard (see par. 1940), and the doors must be stripped when necessary.

¹⁰ A "way car" is one from which shipments are unloaded by the train crew.

Placarding of Cars and Certification of Contents.

1664. Uniform practice is important, and the prescribed forms of car certificates and placards must be used.

1665. **Car Certificate.**—The following certificate (prescribed by par. 1662k), printed on strong tag board measuring 7 by 7 inches, must be duly executed in triplicate by the carrier, and by the shipper if he loads the shipment. The original must be filed by the carrier at the forwarding station, and the other two must be attached to the outside of the car doors, one on each side, the lower edge of the certificate $4\frac{1}{2}$ feet above the floor level.

CAR CERTIFICATE.

No. 1. _____ Station, _____, 19—.

I hereby certify that I have this day personally examined _____ car No. _____, and that the roof and sides have no loose boards, holes or cracks, or unprotected decayed spots liable to hold sparks and start a fire; that the kingbolts or draft bolts are properly protected, and that there are no uncovered irons or nails projecting from the floor or sides of the car which might injure packages of explosives; also, that the floor is in good condition and has this day been cleanly swept before the car was loaded; that I have examined all the axle boxes, and that they are properly covered, packed and oiled, and that the air brakes and hand brakes are in condition for service.

No. 2 _____ Station, _____, 19—.

I hereby certify that I have this day personally examined the above car, that the floor is in good condition and has been cleanly swept and that the roof and sides have no loose boards, holes, cracks, or unprotected decayed spots liable to hold sparks and start a fire; that the kingbolts and draft bolts are protected, and that there are no uncovered irons or nails projecting from the floor or sides of the car which might injure packages of explosives; that the explosives in this car have been loaded and stayed, and that the car has been placarded according to paragraphs 1661, 1666, and 1674 to 1683, inclusive, of the Regulations for the Transportation of Explosives prescribed by the Interstate Commerce Commission; that the doors fit so tightly or have been stripped so that sparks can not get in at the joints or bottom.

_____,
_____.

NOTE.—Both certificates must be signed. Certificate No. 1 by the

representative of the carrier. For all shipments loaded by the shipper he, or his authorized agent, and the representative of the carrier must sign certificate No. 2. When the car is not loaded by shipper certificate No. 2 must be signed only by the representative of the carrier. A shipper should decline to use a car not in proper condition.

1666. **Placard.**—Each car containing any of the explosives specified in paragraph 1661, and in any quantities, must be protected by attaching to the outside of the car on both sides and ends, the lower edge 4½ feet above the car floor, a standard placard, 12 by 14 inches, on which will appear in conspicuous red and black printing, on strong tag board, the following notice:

EXPLOSIVES
(To be printed in red.)
HANDLE CAREFULLY
KEEP FIRE AWAY
(To be printed in red.)

..... **Station**, 19...

CONDENSED RULES FOR HANDLING THIS CAR.

1. This car must not be placed in a passenger train; nor in a mixed train if avoidable.
2. Cars containing explosives must be near center of train and may be together if desired; must be at least fifteen cars from engine and ten cars from caboose when length of train will permit.
3. Cars containing explosives must be placed between box cars which are not loaded with inflammable articles, charcoal, cotton, acid, lumber, iron, pipe, or other articles liable to break through end of car from rough handling.
4. A steel underframe car containing explosives may be placed between steel hopper cars in train.
5. The air and hand brakes on this car must be in service.
6. In shifting, have a car between this car and engine whenever possible, and do not cut this car off while in motion.
7. Avoid all shocks to this car and and couple carefully.
8. Avoid placing it near a possible source of fire.
9. Engines on parallel track must not be allowed to stand opposite or near this car when it can be avoided.

1667. A car containing any of the explosives (as prescribed in par. 1661) must not be permitted to leave a station or sid-

ing without having the certificates and placard prescribed in paragraphs 1665 and 1666 securely and properly affixed.

1668. **Shippers' Certificate.**—Before any package containing one or more of the following articles:

- Black or brown powder,
- High explosives,
- Smokeless powder for cannon,
- Smokeless powder for small arms,
- Fulminates,
- Small-arms ammunition,
- Ammunition for cannon—explosive projectiles,
- Ammunition for cannon—empty projectiles,
- Ammunition for cannon—without projectiles,
- Explosive projectiles,
- Empty projectiles,
- Detonating fuzes,
- Blasting caps,
- Electric blasting caps,
- Primers (naming kind),
- Percussion fuzes,
- Time or combination fuzes,
- Common fireworks,
- Special fireworks,
- Safety fuze, or
- Safety squibs,

can be accepted, the shipper must prepare and deliver to the carrier a shipping order on which each article is entered under its proper name, as specified in this paragraph, and over the signature of shipper, or his duly authorized agent, must be printed, written, or stamped, and made part of the shipping order, the following certificate:

This is to certify that the above articles are properly described by name and are packed and marked and are in proper condition for transportation, according to the regulations prescribed by the Interstate Commerce Commission.

The carrier must see that the shipment is properly described and that the correct gross weight is given on the reve-

nue waybill. The carrier must also cause to be written or stamped on the face of the card and revenue waybill:

Shippers' Certificate on File with Initial Carrier.

The card waybill, for a car containing any quantity of the explosives named in paragraph 1661, must also have plainly stamped across the top the word "EXPLOSIVES."

1669. The carrier must see that the shipping order for explosives is kept at stations where the shipments originate on a separate file, together with all original Car Certificates that pertain to that station. The duplicate and triplicate Car Certificates taken from cars unloaded at any station may be destroyed if there are no violations of these regulations to report. (See par. G, General Rules.)

Shipments from Connecting Lines.

1670. Cars containing explosives as specified in paragraph 1661 which are offered by connecting lines must be carefully inspected, without unnecessary disturbance of lading, by the receiving line to see that these regulations have been complied with, and the car must not be forwarded until all discovered violations are corrected.

Shipments of explosives offered by connecting steamship lines must comply with these regulations, and revenue waybill must bear the indorsements prescribed by paragraph 1668.

Handling of Explosives.

1671. In handling packages of explosives at stations and in cars the greatest care must be taken to prevent their falling or getting shocks. They must not be thrown, dropped, nor rolled.

1672. The carrier must choose careful men to handle explosives, must see that the platform and the feet of the men are as free as possible from grit, and must take all possible precautions against fire. Unauthorized persons must not be allowed to have access to explosives at any time while they are in the custody of the carrier. Suitable provision must be made, outside of the station, when practicable, for the safe

storage of explosives, and every effort possible must be made to reduce the time of this storage. Prompt removal by consignee must be enforced, to avoid unnecessary danger.

1673. Shipments of high explosives and powder should not be unloaded at a nonagency station unless the consignee is there to receive them, or unless satisfactory storage facilities are provided at that point for their protection.

Loading in Car.

1674. Boxes of explosives when loaded in the car must rest on their bottoms. A car must not contain more than 70,000 pounds gross weight of explosives. This limit does not apply to shipments of ammunition.

1675. Explosives packed in round kegs, except when boxed, must be loaded on their sides with heads toward ends of the car; and they must not be placed in the space opposite the doors unless the doorways are boarded on the inside as high as the lading.

Large casks, barrels, or drums may be loaded on their sides or ends as will best suit the conditions.

1676. Packages containing any of the explosives for the transportation of which a certified and placarded car is prescribed (par. 1661) must be stayed (blocked and braced) by whoever loads the car, to prevent change of position by the ordinary shocks incident to transportation. Special care must be used to prevent them from falling to the floor or from having anything fall on them during transit. To prevent delays to way-freight trains, when there is more than one shipment of explosives loaded in a "peddle" or "way car," each shipment should be stayed separately. If the staying is broken down to unload a shipment of explosives, the remaining packages must be restayed.

1677. Detonating fuzes or blasting caps, or electric blasting caps, must not be loaded in a car or stored with high explosives of any kind, including explosive projectiles, nor with wet nitrocellulose, nor with smokeless powder for small arms.

1678. Fulminates in bulk must not be loaded with any explosive or inflammable article.

1679. When necessary, detonating fuzes may be assembled in explosive projectiles shipped by the United States Government.

1680. Fireworks must not be loaded in the same car with any other explosives or inflammable substance, except small-arms ammunition, primers, percussion fuzes, time or combination fuzes, safety fuze, and safety squibs.

1682. Explosives covered by these regulations, other than small-arms ammunition, primers, percussion fuzes, time or combination fuzes, safety fuzes, and safety squibs, must not be transported in the same car with nor stored on railway property near any of the dangerous articles covered by the Regulations for the Transportation of Inflammable Articles and Acids approved by the American Railway Association and on file with the Interstate Commerce Commission.

When practicable, certain and separate days should be assigned for receiving from shippers less than carload lots of explosives.

1683. In a car containing explosives all packages of other freight must be so loaded and stayed as to prevent all injury of packages of explosives during transit. When it is possible, explosives should be loaded so as to avoid transfer stations.¹¹

Handling Cars Containing Explosives.

1684. Cars containing explosives must not be hauled in a passenger train; nor in a mixed train when this can be avoided. The phrase "cars containing explosives" as used in this and subsequent paragraphs, excepting paragraph 1697, refers to the explosives specified in paragraph 1661. This does not apply to explosives lawfully transported in a baggage or express car in a passenger train in accordance with Section 232 of the Act of Congress approved March 4, 1909.

1685. **Expediting Shipments of Explosives.**—Every possible effort must be made to expedite the movement of cars containing explosives.

1686. **In Through Road Trains.**—Cars containing explosives

¹¹ At stations where it is necessary to handle explosives at night it is recommended that incandescent electric lights be provided.

must be placed near the center of the train, and two or more such cars may be placed together if desired. They must be at least fifteen (15) cars from the engine and ten (10) cars from the caboose when the length of train will permit.

Such cars must be placed between box cars which are not loaded with inflammable articles, charcoal, cotton, acid, lumber, iron, pipe, or other articles liable to break through end of car from rough handling.

When explosives are loaded in steel underframe cars, such cars may be placed in train between steel hopper cars. All cars containing explosives must have air and hand brakes in service.

1687. In Shifting and Local Freight Trains.—Cars containing explosives must be coupled in the air service and placed as near the center of the train as possible.

1688. Handling in Yards.—When handling cars containing explosives in yards or on sidings, they must, unless it is practically impossible, be coupled to the engine protected by a car between, and they must never be cut off while in motion.

They must be coupled carefully and all unnecessary shocks must be avoided. Other cars must not be allowed to strike a car containing explosives. They must be so placed in yards or on sidings that they will be subject to as little handling as possible, removed from all danger of fire, and, when avoidable, engines on parallel tracks must not be allowed to stand opposite or near them.

1689. Under no circumstances must a car known to require the "EXPLOSIVE" placard be taken from a station, including transfer stations, or a siding, unless it is properly carded as per paragraphs 1661 and 1666, nor unless the car is in proper condition.

1690. When a car containing explosives is in a train, the carrier must make proper provision for notifying its train and engine employes of the presence and location of such car in the train before leaving the initial station.

1691. Such cars must be frequently inspected to see that the carding is intact. Whenever any of these cards become

detached or lost in transit they must be replaced on arrival at the next division terminal yard.

1692. Unless otherwise arranged for, when a car containing explosives is to be transferred, unloaded, or stored for any purpose, at a given junction, station, or yard, the carrier must provide for due notice to such station, by wire, of the probable time of arrival and the number of cars (not car numbers) in order that proper provision may be made at that point for handling the same.

1693. At points where trains stop cars containing explosives and adjacent cars must be examined to see if they are in good condition and free from hot boxes or other defects liable to cause damage. If cars containing explosives are set out short of destination for any cause, the carrier must arrange that proper notice be given to prevent accident.

1694. Whenever a car containing explosives is opened for any purpose inspection must be made of the packages of explosives to see that they are properly stowed and in good condition and that no box of dynamite is standing on its end or side. Upon the discovery of leaking dynamite or loose powder the defective packages must be carefully removed to a safe place. Loose powder or other explosives must be swept up and carefully removed. If the floor is wet with nitroglycerin, the car is unsafe to use, and a local inspector of the Bureau of Explosives should be immediately called to superintend the thorough mopping and washing of the floor with a warm, saturated solution of concentrated lye or sodium carbonate. If necessary, the car must be placed on an isolated siding and proper notice given. (See pars. 1534 and 1535.)

1695. The certificates and placards prescribed in pars. 1665 and 1666 must be removed from the car as soon as the explosives are unloaded.

1696. Carriers must see that all shippers of explosives in their territory are furnished with copies of these regulations.

In Case of a Wreck.

1697. In case of a wreck involving a car containing explosives, the first and most important precaution is to prevent

fire. Although most of the group, "high explosives," may burn in small amounts quietly and without causing a disastrous explosion, yet everything possible must be done to keep fire away. Before beginning to clear a wreck in which a car containing explosives is involved, all unbroken packages should be removed to a place of safety, and as much of the broken packages as possible gathered up and likewise removed, and the rest saturated with water. Many explosives are readily fired by a blow or by the spark produced when two pieces of metal or a piece of metal and a stone come violently together. In clearing a wreck, therefore, care must be taken not to strike fire with tools, and in using the crane or locomotive to tear the wreckage in pieces the possibility of producing sparks must be considered. With most explosives thorough wetting with water practically removes all danger of explosion by spark or blow; but with the dynamites, wetting does not make them safe from blows. With all explosives, mixing with wet earth renders them safer from either fire, spark, or blow. In case "fulminate" has been scattered by a wreck, after the wreck has been cleared the top surface of the ground should be removed, and, after saturating the area with oil, replaced by fresh earth. If this is not done, when the ground and fulminate become dry, small explosions may occur when the mixed material is trodden on or struck.

1940. A white placard, of diamond shape, printed on strong tag board, measuring 15 inches on each diagonal, and bearing in red and black letters the following inscription, "INFLAMMABLE—KEEP LIGHTS AND FIRES AWAY—HANDLE CAREFULLY," must be placed on each outside end and side of a car containing any quantity of Smokeless Powder for Cannon, or Ammunition for Cannon with Empty Projectiles, or Fireworks.

CHAPTER XXX.

FREIGHT TARIFFS OR RATE SCHEDULES.

SECTION

456. Publication of Rates and Charges for Transportation.
457. Filing Tariffs, Classifications, Exception Sheets, Supplements, Concurrences, etc., with the Interstate Commerce Commission.
458. Posting of Tariffs or Rate Schedules.
459. Jurisdiction of the Interstate Commerce Commission over the Publication, Posting and Filing of Tariffs or Rate Schedules.
460. Notice required for Publication of Rates and Changes therein.
461. Rules and Regulations affecting Rates, such as Switching, Terminal, Drayage, Refrigeration, Car-Service, Storage and Elevation Charges, and Diversion, Reconsignment and Transit Privileges, and Allowances to Shippers must be shown in Tariffs.
462. Carriers prohibited from engaging in Transportation subject to the Act to Regulate Commerce unless they file and publish Rates and Charges thereon.
463. Tariffs distinguishing between Shipments handled by Steam and Electrical Power.
464. Phraseology used in Tariffs.
465. Different Kinds of Freight Tariffs defined.
466. Tariffs must be printed.
467. Form and Size of Freight Tariffs.
468. Information to be shown on Title-Page of every Freight Tariff.
469. Information that Freight Tariffs shall contain.
470. A Tariff is not governed by a Classification except when so Specified.
471. Commodity Rates shown in Tariffs must be Specific.
472. Alternative Use of Class or Commodity Rates.
473. Amendments and Supplements to Tariffs.
474. Effective Dates of Tariffs, Classifications, and Exception Sheets and Supplements thereto.
475. Cancellation of Tariffs or Parts thereof.
476. Joint Tariffs issued by Joint Agents.
477. Agents authorized to issue and file Tariffs, Classifications and Exception Sheets and Supplements thereto.
478. Concurrence by Carriers in Tariffs issued and filed by another Carrier or its Agent.

SECTION

479. Letter of Transmittal accompanying Tariffs filed with the Commission.
480. Basing or Proportional Tariffs must be Specific.
481. Distance Tariffs.
482. Fast Freight Line Guide Books.
483. Tank Line Gauge Books.
484. Tariffs Governing the Transportation of Explosives.
485. Tariffs covering Transportation strictly for the United States, State, or Municipal Governments need not be Published or Filed.
486. Tariffs covering Freight received in the United States and Carried through a Foreign County to any Place in the United States.
487. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.
488. Withdrawal of Filed Tariffs not permitted.
489. Equalizing Rules or Tariffs.
490. Responsibility of Carriers under Tariffs.
491. Tariffs regulating Switching or Terminal Charges between Carriers.
492. Index of Freight Tariffs.
493. Tariffs containing Rail-and-Water and All-Water Rates.
494. Rate Schedules rejected by the Commission.
495. Receipt by and Filing of Tariffs with the Commission does not Relieve Carriers from Liability for Violation of the Act or Regulations thereunder.
496. Rates Prescribed in Commission's Decisions must be Promulgated in Tariffs and Commission Notified.
497. Circulars announcing Compliance with Orders of Court.
498. Maintenance of Relative Adjustment in Issuing Tariffs to Conform with Formal Order of the Commission.
499. Rates for hauling Private Cars.
500. Industrial or Terminal Roads as Parties to Joint Tariffs.
501. Tariffs can not be given a Retroactive Effect.
502. All State or other Rates used for Interstate Shipments must be Posted and Filed.
503. All Local Tariffs should have I. C. C. Numbers and be Posted and Filed.
504. Tariffs of Water Carriers.
505. Lessee Road not serving Public as Common Carrier.
506. Tariffs Covering Export and Import Traffic.
507. Maxima Rates not Specific Rates.
508. Copies of Schedules and Tariffs of Rates to be preserved as Public Records in custody of Secretary of Commission.
509. Certified Copies of Tariffs as Prima Facie Evidence.
510. Carriers cannot advance Charges to Water Carriers unless they are Parties to the Tariff.

SECTION

- 511. Departure from Published Tariff declared to be a Misdemeanor and Penalty Therefor.
- 512. Failure of Carrier to publish Rates a Misdemeanor and Penalty therefor.
- 513. Penalty for Failure of Carrier to comply with Tariff Regulations promulgated by Commission.
- 514. Express Company Freight Tariffs or Rate Schedules.

§ 456. Publication of Rates and Charges for Transportation.**¶ A. MANDATE OF THE STATUTE AS TO PUBLICATION OF RATES.**

The Act to Regulate Commerce requires that every common carrier subject to its provisions shall publish schedules showing all the rates and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established.¹

If no joint rate over the through route has been established, the several carriers in such through route shall print, as aforesaid, the separately established rates and charges applied to the through transportation.²

¶ B. JOINT TARIFFS MUST SPECIFY NAMES OF PARTICIPATING CARRIERS.

The Act requires the names of the several carriers which are parties to any joint tariff to be specified therein.³

¶ C. PRESUMPTION THAT RATES HAVE BEEN DULY PUBLISHED.

Where suit at law for damages, because of an alleged unjust or discriminatory freight charge, is brought in the Federal Court, that Court in the absence of an averment in the petition that the carrier has failed to post and file its tariff, is bound to presume that the carrier has complied with the law, and that the charge complained of is made thereunder. Where such is the case relief can only be obtained through the Commission.⁴

¹ Act to Regulate Commerce. Section 6.

² Ibid.

³ Ibid.

⁴ *Clement v. L. & N. R. Co.* (1907), 153 Fed. Rep. 979.

¶ D. CARRIER'S TARIFF MAKING REFERENCE TO TARIFF OF COMPETING CARRIER DOES NOT MEET THE REQUIREMENT OF THE LAW.

The purpose in requiring rates to be published and posted is to inform the public of the rates of transportation at which shipments can be made.⁵ A notation in the tariff of one carrier making reference to the tariff of some competing carrier, a tariff which may not be accessible to the prospective shipper, cannot meet the requirements of the law that the rate charged shall be published and posted.⁶

¶ E. IMPORTANCE OF PROPER PUBLICITY IN RATES.

The importance of a clear statement of rates and proper publicity of the same is forcefully stated in *United States v. Illinois Terminal Railway Company*,⁷ in which it is said:

The chief object of the Act to Regulate Commerce is the prevention of discrimination. Carriers, being engaged in a public employment, must serve all members of the public on equal terms. This was the doctrine of the common law. It has been explicitly stated and strengthened by the successive acts to regulate commerce. The requirement of the Act that all rates should be published is perhaps the chief feature of the scheme provided for the effective outlawing of all discriminations. If this portion of the Act is not strictly enforced, the entire basis of effective regulation will be lost. Secret rates will inevitably become discriminating rates. Whenever discriminating rates or practices are made public, a thousand forces of self-interest and of public policy will be set at work to reduce them to fairness and equality.

§ 457. Filing Tariffs, Classifications, Exception Sheets, Supplements, Concurrences, etc., with the Interstate Commerce Commission.

¶ A. MANDATE OF THE ACT AS TO FILING OF RATE SCHEDULES WITH THE COMMISSION.

The Act to Regulate Commerce provides that every common carrier subject to its provisions shall file with the Commission schedules showing all the rates and charges for transportation between different points on its own route and be-

⁵ Pitts & Son v. St. L. & S. F. Rd. Co. et al., 10 I. C. C. R. 684.

⁶ Ibid.

⁷ United States v. Illinois Terminal Railway Co., 168 Fed. Rep. 546.

tween points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate has been established.⁸

If no joint rate over the through route has been established, the several carriers in such through route shall file as aforesaid, the separately established rates and charges applied to the through transportation.⁹

The above provisions apply to all traffic, transportation, and facilities subject to the Act.¹⁰

¶ B. CONCURRENCE OF PARTICIPATING CARRIERS.

The concurrence of every carrier participating in the tariffs, etc., as stated in the preceding paragraph, must be on file with the Commission or accompany the tariff or supplement.¹¹

See *Section 478, post.*

¶ C. FILING BY PROPER OFFICER OR DESIGNATED AGENT.

Tariffs, classifications, and exception sheets and supplements thereto shall be filed with the Commission by proper officer of the carrier or by an agent designated to perform that duty.¹²

¶ D. TWO COPIES OF ALL TARIFFS MUST BE FILED WITH THE COMMISSION.

Common carriers and agents are directed, in filing schedules in compliance with the statute, to transmit two (2) copies of each tariff, supplement, classification, or other schedule of rates or regulations for the use of the Commission, both copies to be included in one package and under one letter of transmittal.¹³

¶ E. HOW TARIFFS FILED WITH THE COMMISSION MUST BE ADDRESSED.

All tariffs sent for filing with the Interstate Commerce Com-

⁸ See note 1, *supra*.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ Rule 13, Tariff Circular 17-A.

¹² *Ibid.*

¹³ Rule 14, Tariff Circular 17-A.

mission must be addressed, "Interstate Commerce Commission, Bureau of Tariffs, Washington, D. C."¹⁴

¶ F. TARIFFS MUST BE DELIVERED TO THE COMMISSION FREE FROM ALL CHARGES OR CLAIMS FOR POSTAGE.

No tariff or supplement will be accepted by the Commission for filing unless it is delivered to the Commission, free from all charges or claims for postage.¹⁵

¶ G. TARIFFS MUST BE DELIVERED TO COMMISSION WITHIN FULL STATUTORY TIME.

All tariffs or supplements must be delivered to the Commission within the full thirty days required by law before the date upon which such tariffs or supplements are stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held at the Postoffice Department because of insufficient postage.¹⁶

For tariffs and supplements issued on short notice under special permission of the Commission full thirty days' notice is not required, but literal compliance with the requirements of the Commission for notice named in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.¹⁷

¶ H. DISPOSITION OF TARIFFS RECEIVED BY COMMISSION TOO LATE TO GIVE STATUTORY NOTICE.

A tariff or a supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law will be returned to the sender, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction.¹⁸

¹⁴ Rule 14, Tariff Circular 17-A.

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

In other words, when tariff or a supplement is issued and as to which the Commission is not given the statutory notice it is as if it had not been issued and full statutory notice must be given of any reissue thereof. No consideration will be given to telegraphic notices in computing the thirty days' notice required.¹⁹

§ 458. Posting of Tariffs or Rate Schedules.

¶ A. MANDATE OF THE ACT AS TO POSTING OF RATE SCHEDULES.

The Act to Regulate Commerce requires that every common carrier subject to its provisions shall keep open to public inspection schedules showing all the rates and charges for transportation on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established.²⁰

If no joint rate over the through route has been established, the several carriers in such through route shall keep open to public inspection, as aforesaid, the separately established rates and charges applied to the through transportation.²¹

Copies of such schedules are required by the Act to be kept posted for the use of the public in two public and conspicuous places in every depot, station or office of such carrier where freight is received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.²²

The above provisions apply to all traffic, transportation, and facilities subject to the Act.²³

¶ B. PURPOSE OF THE PROVISION OF THE ACT REQUIRING RATE SCHEDULES TO BE POSTED.

The comprehensive terms of the Act with regard to the posting of rate schedules at the stations and depots of carriers were

¹⁹ Rule 14, Tariff Circular 17-A.

²⁰ See note 1, *supra*.

²¹ *Ibid*.

²² *Ibid*.

²³ *Ibid*.

apparently intended to serve the double purpose of thus affording shippers and patrons the opportunity to ascertain for themselves the lawful charges for the service sought by or rendered to them, and of also guarding against the adoption and use of tariff rates or rules without giving full public notice thereof.

The requirement of the Act that rates shall be published is imposed in order that a shipper may ascertain by inspection exactly what it will cost him to transport his property, and also what the cost will be to his competitor of having his property transported.²⁴

The clear purpose of the law is that every person may have reasonable opportunity to gain through proper effort on his part full knowledge as to the rates published and charged by carriers. In order that practicable and useful regulations and practice might be established, authority was vested in the Commission, as explained in *Section 461, post*, to modify the terms of the Act in this particular.²⁵

¶ C. RULES GOVERNING THE POSTING OF TARIFFS AT STATIONS.

At a general session of the Interstate Commerce Commission, held at Washington, D. C., on the 2d day of June, A. D. 1909, it formulated the following rules and regulations governing the posting of tariffs at stations:

“Under the authority conferred upon the Commission by Section 6 of the Act, to modify its requirements as to publishing, posting, and filing of tariffs, the Commission issues the following order, in connection with which it must be understood that each carrier has the option of availing itself of this modification of the requirements of Section 6 of the Act or of complying literally with the terms of the Act. If such modification is accepted by a carrier it must be understood that misuse of the privileges therein extended or frequent misquotation of rates on the part of its agents will result in cancellation of the privileges as to that carrier. It should also be understood that in so modifying the requirements of the Act the Commission

²⁴ *United States v. C. & A. Ry. Co.* (1906), 148 Fed. Rep. 646; see also *Pitts & Son v. St. L. & S. F. Rd. Co. et al.* (1905), 10 I. C. C. R. 684.

²⁵ *Twenty-First Annual Report of I. C. C.* (1907).

expects a continuation by carriers of the practice of furnishing tariffs to a reasonable extent to frequent shippers thereunder:

“Every carrier subject to the provisions of the Act to Regulate Commerce (excepting those to which special and specific modifications have heretofore been granted) shall place in the hands and custody of its agent or other representative at every station, warehouse, or office at which passengers or freight are received for transportation, and at which a station agent or a freight agent or a ticket agent is employed, all of the rate and fare schedules which contain rates and fares applying from that station, or terminal or other charges applicable at that station, including the schedules issued by that carrier or by its authorized agent and those in which it has concurred. Such agent or representative shall also be provided with all changes in, cancellations of, additions to, and reissues of such publications in ample time to thus give to the public, in every case, the thirty days’ notice required by the Act.

“Such agent or representative shall be provided with facilities for keeping such file of schedules in ready-reference order, and be required to keep said files in complete and readily accessible form. He shall also be instructed and required to give any information contained in such schedules, to lend assistance to seekers for information therefrom, and to accord inquirers opportunity to examine any of said schedules, without requiring or requesting the inquirer to assign any reason for such desire, and with all the promptness possible and consistent with proper performance of the other duties devolving upon him. He shall also furnish upon request therefor quotation in writing of rates via such carrier’s line not contained in the tariffs on file at that station. Carrier may arrange for such agent to refer such requests to a proper officer of the company, but the quotation must be furnished within a reasonable time and without unnecessary delay.

“Each of such carriers shall also provide and each of such agents or representatives shall also keep on file copies of the current I. C. C. issues of the indices of the tariffs of that carrier.

“Each of such carriers shall also provide, either in its indices

of tariffs or in separate publication or publications, which must be kept up to date, be given I. C. C. numbers and be filed with the Commission, an index or indices of the tariffs that are to be found in the files at each of its several stations or offices. Such index shall be kept on file and be open to inspection at each of such several stations or offices as hereinbefore provided. If such indices are prepared for a system of road or for a number of stations or offices they must be printed and may be arranged under a system of station numbers and alphabetical list of stations. If arranged for individual stations or offices they may be printed or typewritten. All such indices must be of size 8 by 11 inches.

“Each of such carriers shall require its traveling auditors to check up each station’s or office’s file of tariffs at least once in each six months, unless it employs one or more traveling tariff inspectors who will make such inspections and checks.

“Each of such carriers whose lines reach any of the cities in the following list, either over its own rails or by trackage rights, or by boat line, or by ferry, shall provide and maintain at each of said cities so reached by it, and at such additional points as may from time to time be designated by the Commission, complete files of the tariff publications which it issues or is a party to, together with indices of same as hereinbefore required:

Alabama, Montgomery.
 Arkansas, Little Rock.
 California, San Francisco.
 Los Angeles.
 Colorado, Denver.
 Connecticut, Hartford.
 Florida, Jacksonville.
 Georgia, Atlanta.
 Illinois, Chicago.
 Springfield.
 Indiana, Indianapolis.
 Iowa, Des Moines.
 Louisiana, New Orleans.
 Maine, Portland.
 Maryland, Baltimore.
 Massachusetts, Boston.
 Worcester.
 Michigan, Detroit.
 Minnesota, St. Paul.
 Minneapolis.
 Missouri, St. Louis.
 Kansas City.

Mississippi, Jackson.
 Montana, Helena.
 Nebraska, Omaha.
 New York, New York.
 Buffalo.
 North Carolina, Charlotte.
 Ohio, Cincinnati.
 Cleveland.
 Oklahoma, Oklahoma City.
 Oregon, Portland.
 Pennsylvania, Philadelphia.
 Pittsburg.
 South Carolina, Columbia.
 South Dakota, Sioux Falls.
 Tennessee, Memphis.
 Chattanooga.
 Texas, Fort Worth.
 Houston.
 Utah, Salt Lake City.
 Virginia, Richmond.
 Washington, Seattle.
 Wisconsin, Milwaukee.

“Each of such files shall be in charge of an employee who will give information and assistance to those who may wish to consult such file, and each such file shall be kept open and accessible to the public during ordinary business hours and on business days.

“Each of such carriers whose lines do not so reach any of the above-named cities shall also provide at least one point on its line a complete file of the tariffs which it issues or is a party to, together with indices of same as hereinbefore required, which file will be in charge of an employee of the carrier, who will give desired information and assistance to those who may wish to consult such file. This file of tariffs shall be open and accessible to the public during ordinary business hours and on business days.

“If a subsidiary or small connecting line has authorized the parent company or principal connecting line to publish and file for it all its tariffs, tariffs so issued and filed on its behalf will be included in the complete public tariff files of the parent or issuing line, and it will not be necessary for such subsidiary or small line to maintain an additional complete public file.²⁶

“Each of such carriers shall also provide and cause to be posted and kept posted in two conspicuous places in every station waiting-room, warehouse, or office at which schedules are so placed in custody of agent or other representative notices printed in large type, and reading as follows:

“(A) Complete public file [or files] of this company's tariffs is [are] located at, in the city of [or the cities of and]. The rate and fare schedules applying from or at this station and indices of this company's tariffs are on file in this office, and may be inspected by any person upon application and without the assignment of any reason for such desire.

“The agent or other employee on duty in the office will lend any assistance desired in securing information from or in interpreting such schedules.

“At exclusive freight stations or warehouses and at exclusive passenger stations or offices carriers may, under this order,

²⁶ Rule 86, Con. Rul. Bul. No. 4 (June 25, 1908).

place and keep on file only the freight or passenger schedules, respectively, and in such cases the posted notices may be varied to read:

“The freight rate [or, passenger fare] schedules applying from or at [or, from] this station and index of this company’s freight [or, passenger] tariffs are on file in this office, etc.

“Each of such carriers shall also require its agent or other employee in charge of tariffs at each point where complete public file is not kept to post from time to time in a public place in waiting room or office a brief bulletin notice to the effect that rates from that station on certain commodities have been changed.”²⁷

¶ D. EFFECT OF FAILURE TO POST TARIFFS ON THE LEGALITY OF RATE FILED WITH COMMISSION.

In the case of *Texas & Pacific Ry. Co. v. Cisco Oil Mill*,²⁸ the plea was presented that a rate schedule not having been lawfully posted in “two public and conspicuous places in every depot, waiting room, office,” etc., the rate schedule itself was unlawful and therefore not binding upon the carrier. The Supreme Court said:

“The assumption (that ‘no schedule rate was in existence’), it is insisted, is authorized because, it is asserted, the conclusion that the schedule of rates became legally operative was not justified by the finding that such schedule had been filed with the Interstate Commerce Commission and copies thereof furnished to the freight officers of the railroad company at Cisco and other points. The contention is without merit. The filing of the schedule with the Commission and the furnishing by the railroad company of copies to its freight

²⁷ In the Matter of Modification of the Provisions of Section 6 of the Act with Regard to Posting Tariffs at Stations, issued at a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 2nd day of June, A. D. 1908. Compliance with the order as to all available tariffs was required not later than October 1, 1908, and full compliance in every instance not later than January 1, 1909.

²⁸ *Texas & Pacific Ry. Co. v. Cisco Oil Mill*, 204 U. S. 449; 51 L. ed. 562, 27 Sup. Ct. 358.

office incontrovertibly evidenced that the tariff of rates contained in the schedule had been established and put in force as mentioned in the first sentence of the section, and the railroad company could not have been heard to assert to the contrary.

“The requirement that schedules should be ‘posted in two public and conspicuous places in every depot,’ etc., was not made a condition precedent to the establishment and putting in force of the tariff of rates, but was a provision based upon the existence of an established rate, and plainly had for its object the affording of special facilities to the public for ascertaining the rates actually in force. To hold that the clause had the far-reaching effect claimed, would be to say that it was the intention of Congress that the negligent posting by an employee of but one instead of two copies of the schedule, or the neglect to post either, would operate to cancel previously established schedule,—a conclusion impossible of acceptance. While Section 6 forbade an increase or reduction of rates, etc., ‘which have been established and published as aforesaid,’ otherwise than as provided in the section, *we think* the publication referred to was that which caused the rates to become operative; and this deduction is fortified by the terms of Section 10 of the Act making it a criminal offense for a common carrier or its agent or a shipper or his employee improperly ‘to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier.’ ”

“Whether, by the failure to post an established schedule, a carrier became subject to penalties provided in the act to regulate commerce, or whether, if damage had been occasioned to a shipper by such omission, a right to recover on that ground alone would have obtained, we are not called upon in this case to decide.”

Any action based upon the failure of carriers to post its tariffs as provided by Section 6 of the Act must be in accordance with the procedure defined in the statute.²⁹

²⁹ Paxton Tie Co. v. Det. Southern Rd. Co. (1905), 10 I. C. C. R. 422; Rea v. M. & O. Rd. Co. (1897), 7 I. C. C. R. 43.

¶ E. **LAWFULLY PUBLISHED RATE BINDING ON BOTH SHIPPER AND CARRIER.**

A tariff filed with the Commission in the manner prescribed by law and on statutory notice is a lawful tariff and lawfully binding on both carriers and shippers, though it was not posted at stations full thirty days prior to its effective date.³⁰

A lawfully published rate speaks with equal authority to the shipper and the carrier, and both are chargeable with notice of the rate and the route over which a rate is made applicable.³¹

¶ F. **WHERE DAMAGES RESULT TO THE SHIPPER ON ACCOUNT OF THE FAILURE OF THE CARRIER TO POST RATE SCHEDULE.**

For full consideration, see *Section 422, ante*.

¶ G. **NOTICE PLACED IN DEPOT REFERRING SHIPPER TO AGENT.**

The provisions of the sixth section of the Act to Regulate Commerce are not complied with by carrier posting a notice in the station or depot stating that the tariffs may be inspected upon application to the carrier's agent.³²

¶ H. **POSTING TARIFFS ON EXPORT AND IMPORT TRAFFIC.**

See *Section 506, Paragraph E, post*.

§ 459. Jurisdiction of the Interstate Commerce Commission over the Publication, Posting and Filing of Tariffs or Rate Schedules.

The Act to Regulate Commerce empowers the Commission to determine and prescribe the form in which schedules required by the Act to be kept open to public inspection shall be prepared and arranged and to change the form from time to time as shall be found expedient.³³

The Act also authorizes the Commission in its discretion and for good cause shown, to allow changes upon less than

³⁰ Pueblo Transportation Association v. Southern Pacific Co. et al., 14 I. C. C. R. 82.

³¹ Poor Grain Co. v. C. B. & Q. Ry. Co. et al., 12 I. C. C. R. 469.

³² See note 29, *supra*.

³³ See note 1, *supra*.

statutory notice, or modify the requirements of the Act in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.³⁴ In pursuance of this authority the Commission has promulgated a code of rules and regulations governing the issuance, publication and filing of tariffs and schedules of rates, as explained in a former section of this book. All these rules and regulations are treated of at length throughout this work, under this chapter and other appropriate headings.

The Commission is an administrative body. The rates, regulations, and practices which it establishes within its jurisdiction become rules of action which may and must enter into the business dealings of this country. It may be necessary to change from time to time these rulings as varying conditions require, but they should never be changed except upon due notice to the public, which is affected by them.³⁵

§ 460. Notice required for Publication of Rates and Changes therein.

¶ A. STATUTORY NOTICE.

Section 6 of the Act to Regulate Commerce as changed by the Hepburn Amendment of 1906, provides that:

“No change shall be made in the rates, and charges, or joint rates and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days’ notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule *then in force* and the time when the changed rates or charges will go into effect; and the proposed changes shall be shown by *printing new schedules*, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection.”

The law as in force prior to the Hepburn Amendment of 1906 provided that in case of advances in rates, the public

³⁴ See note 1, *supra*.

³⁵ *Nebraska-Iowa Grain Co. v. U. P. R. R. Co.*, 15 I. C. C. R. 91.

and the Commission must be given ten days' previous notice thereof, and in cases of reduction in rates, three days' previous notice must in like manner be given. The amended law provides that in *all cases* of changes in rates and charges applicable to interstate traffic, the public and the Commission shall be given thirty days' previous notice.³⁶

¶ B. •RATE CHANGES FILED AND PUBLISHED MUST BECOME EFFECTIVE AND CAN ONLY BE CHANGED ON THIRTY DAYS' NOTICE.

The provisions of the Act quoted in the preceding paragraph plainly refer to rates which have already become effective, and also applies the term "proposed changes" to rates which have not become effective. It follows that after notice of a change in rates has been filed and published the new rates must be allowed to go into effect, and cannot be withdrawn, canceled or superseded except upon notice filed and published for at least thirty days after the date when the rates have become effective.³⁷

A tariff may provide that it will expire upon a date specified therein and which is at least thirty days subsequent to the date upon which it becomes effective, or a tariff may contain a notation that certain rates therein stated will expire upon a date therein specified which is at least thirty days subsequent to the date on which such rates become legally effective, and this will be legal notice of the cancellation or withdrawal of such tariff or of such rates.³⁸ Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice. Therefore a provision in a tariff that the tariff or any part of it will expire upon a given date is not a guaranty that the tariff or such part of it, will remain effective until that date. Such provision must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way.³⁹

³⁶ Twentieth Annual Report of I. C. C. (1906).

³⁷ Rule 54, Tariff Circular 17-A.

³⁸ Ibid.

³⁹ Ibid.

¶ C. POWER OF INTERSTATE COMMERCE COMMISSION TO ALLOW
CHANGES ON LESS THAN STATUTORY NOTICE.

The Act authorizes the Commission in its discretion and for good cause shown to allow changes upon less than thirty days' notice, either in particular instances or by a general order applicable to special or peculiar circumstances and conditions.⁴⁰ This provision was inserted to meet unforeseen emergencies and to prevent any hardship that might result from the requirement of the amended law.⁴¹

The Commission in pursuance of this authority has not only permitted changes in rates on less than statutory notice in particular instances, but has issued general orders applicable to special conditions and circumstances, as will be noted from the following paragraphs and elsewhere.

However, where the establishment of certain rates will to some extent affect the market of a given commodity, in order that dealers and producers may have an opportunity to adapt their affairs to newly-created conditions, the Commission usually orders such changes in rates to be provided for upon full statutory notice.⁴²

Carriers must comply fully with the requirements of the law respecting the filing, publication, and taking effect of proposed rates, unless upon application and for good cause shown the Commission in the exercise of the authority upon it, allow rates to be changed or withdrawn upon less than thirty days' notice, or by a formal order otherwise modify such requirements.⁴³ No regulation or rule of the Commission is authority to change rates or issue tariffs on less than statutory notice unless so specifically provided in the rule or regulation.⁴⁴

The Commission has stated, that, "The requirement for

⁴⁰ See note 1, *supra*.

⁴¹ See note 36, *supra*.

⁴² *Big Blackfoot Milling Co. v. Northern Pacific Ry. Co. et al.*, 16 I. C. C. R. 173; *Kalispel Lumber Co. et al. v. Great Northern Ry. Co. et al.*, 16 I. C. C. R. 164.

⁴³ See note 37, *supra*.

⁴⁴ *Ibid*.

thirty days' notice of changes in rates is regarded by the Commission as a wise and healthy one, and it is not the policy or intent of the Commission to exercise the authority conferred upon it to grant exceptions to that requirement except under circumstances which fully justify such action and which do not involve probable discriminations or resultant rate disturbances. As improvement in tariffs progresses it is believed that the authority for establishing rates on less than statutory notice will be justified in a smaller number and a smaller percentage of cases.⁴⁵

¶ D. POWER OF COMMISSION TO REJECT SCHEDULES WHICH DO NOT GIVE LAWFUL NOTICE OF EFFECTIVE DATE.

The Act to Regulate Commerce (*as amended June 18, 1910*) gives the Commission authority to reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and provides that any schedule so rejected by the Commission shall be void and its use shall be unlawful.^{45a}

¶ E. REQUESTS FOR PERMISSION TO AMEND TARIFFS ON LESS THAN STATUTORY NOTICE.

As stated above the Act authorizes the Commission in its discretion and for good cause shown, to permit changes in tariff rates on less than statutory notice.

The Commission stated that it is believed that this authority should be exercised only in instances where special or peculiar circumstances or conditions fully justify it.⁴⁶ Confusion and complication must follow indiscriminate exercise of this authority.

Applications to Commission.

Such applications must be in proper form and over the signature of the president, vice-president, general traffic manager, assistant general traffic manager or general freight agent,

⁴⁵ Twenty-Third Annual Report of I. C. C. (1909).

^{45a} Section 6, Act, as amended June 18, 1910.

⁴⁶ Rule 58, Tariff Circular 17-A.

specifying title.⁴⁷ The Commission has requested that as far as possible these requests be sent by mail and not by telegraph. Action will be taken only on receipt of the verified application.⁴⁸

¶ F. WHERE FULL NOTICE WAS GIVEN BY COMPETING CARRIER.

Desire to meet the rates of a competing road or line which has given the full statutory notice of change in rates will not of itself be regarded as good cause for allowing changes in rates on a notice of less than thirty days.⁴⁹

¶ G. AMENDMENT OF JOINT TARIFF ON LESS THAN STATUTORY NOTICE.

A request from one carrier, party to a joint tariff for permission to amend such tariff on less than statutory notice necessarily raises a question of some doubt as to the wishes or concurrence of other interested carriers also parties to the tariff. It is desirable and proper that such permission given by the Commission should affect alike all parties to the tariff that is to be amended under it. The Commission therefore ruled:

Applications by Carrier or Agent Authorized to File the Tariff.

That when a carrier gives an agent authority to file tariff or tariffs and supplements thereto in its name, place and stead, or concurrence in tariff or tariffs and supplements thereto which another carrier or its agent may file thereunder, the agent or carrier to whom such authority or concurrence is given has, under the terms of the authority or concurrence, the power and the right to request, in the name and on behalf of the carriers participating in such tariff or tariffs permission to amend same on less than statutory notice.⁵⁰

Request must come from one who issues the Tariff.

Such requests as to joint tariffs must be made by the agent

⁴⁷ Rule 58, Tariff Circular 17-A.

⁴⁸ Ibid.

⁴⁹ Rule 58, Tariff Circular 17-A.

⁵⁰ Ibid.

or the carrier that is authorized to file the tariff and in making them form same as that prescribed for use of individual carrier shall be used, except that the request must state that it is made in the name and on behalf of all carriers that are parties to the tariff, and that formal authority to file the tariff, or formal concurrence in the tariff, is on file with the Commission from each of said carriers.⁵¹

Concurring Carriers Bound by Act of Authorized Agent.

Request will be signed and verified by the agent or officer who makes it, and every carrier that has, by formal authority or concurrence, made itself a party to such tariff will be held bound by the act of its agent under such authority or by its concurrence.⁵²

¶ H. PERMISSION TO CHANGE RATES ON SHORT NOTICE
LIMITED TO EMERGENCY OR NECESSITY.

This authority will be exercised only in cases where actual emergency and real merit are shown. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the omissions or mistakes together with a full statement of the circumstances attending such omission or error and be presented with reasonable promptness after issuance of the defective tariff.⁵³

¶ I. REDUCTION OF JOINT RATE TO EQUAL SUM OF LOCALS.

Where a joint rate or fare is in effect by a given route between any points which is higher than the sum of the locals between the same points, by the same or another route, and such joint rate or fare has been in effect thirty days or longer, such higher joint rate or fare may, until further notice from the Commission, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting and filing with the Commission one day in advance *a supplement to or a reissue*

⁵¹ Rule 58, Tariff Circular 17-A.

⁵² Rule 58, Tariff Circular 17-A.

⁵³ Ibid.

of the tariff in which the joint rate or fare so reduced appears, which supplement or reissue shall show the reduced rate or fare; shall bear notation that it is effective on less than statutory notice "by authority of Rule 56 of Tariff Circular 17-A;" shall show on title page, or in connection with such item, by identifying references and I. C. C. numbers, the tariffs that contain the locals which make up the new joint rate or fare; except that, if the joint rate so reduced is contained in a strictly class rate tariff, the reduced rate will be published in a new commodity tariff or in a supplement to or reissue of a tariff which contains commodity rates and in which all carriers whose lines make up the route over which the rate applies have concurred, and which is issued by the same carrier or agent that issued the tariff which contained the joint rate so reduced. Such tariff, supplement or reissue must bear on its title page, or in connection with such item, the notation: "Issued under authority of Rule 56, Tariff Circular 17-A. The joint rate [or, rates] hereby reduced appears in Tariff, I. C. C. No., item [or, page], and the factors from which the new rate herein shown as equaling the sum of the locals are found in tariff, I. C. C. No., item [or, page]., and tariff, I. C. C. No., item [or, page]"

Except when a new commodity rate is established to supersede a higher class rate this rule limits the authority to change rates or fares thereunder to changes that are announced in supplements or to reissues of the tariffs in which the joint rates or fares so reduced appear, and each such supplement or reissue shall show specifically on its title page the authority under which it is made effective on less than statutory notice and definite and distinct reference to the locals which are used to make up the reduced joint rate or fare.⁵⁴

¶ J. TARIFFS NAMING RATES TO AND FROM POINTS ON NEWLY
CONSTRUCTED LINES OF ROAD, INCLUDING BRANCHES
AND EXTENSIONS OF EXISTING ROADS.

On newly constructed lines of road, including branches

⁵⁴ Rule 56, Tariff Circular 17-A.

and extensions of existing roads, individual rates and also joint rates may be established in the first instances by the carrier owning or operating such newly constructed line to and from points on such new line by posting a tariff of such rates and filing the same with the Commission one day in advance. Such tariff must bear notation that it applies to stations on newly constructed line to or from which no rates have heretofore applied, and give reference to this rule. Tariffs or supplements to tariffs issued by other carriers or joint agents establishing the rates to or from or via such newly constructed line may be issued only under statutory notice or special permission for shorter time. It will be the Commission's policy to grant such permissions in such instances so as to give the carrier and shippers fullest efficiency of such new lines, and in connection with the preparation of such joint publications there is ample time within which to secure such permission.⁵⁵

The above rule applies to *newly constructed lines only*.⁵⁶

¶ K. TARIFFS COVERING TRANSPORTATION OF CIRCUS OUTFITS.

The Act to Regulate Commerce as amended June 29, 1906, applies to the transportation of circuses and other show outfits, but the Commission recognizes the peculiar nature of this traffic and the difficulty of establishing rates thereon in advance of shippers' request describing the character and volume of the traffic offered, and has therefore entered a general order authorizing carriers to establish rates on circuses and other show outfits by tariff to become effective one day after filing thereof with the Commission, and relieving them from the duty of posting such tariffs in their stations. Such tariffs may consist of a proper title page reading "as per copy of contract attached," and to it may be attached a copy of the contract under which the circus is moved. As far as practicable general rules or regulations governing the fixing of such rates should be regularly published and filed.⁵⁷

⁵⁵ Rule 57, Tariff Circular 17-A.

⁵⁶ Ibid.

⁵⁷ Rule 63, Tariff Circular 17-A.

§ 461. Rules and Regulations affecting Rates, such as Switching, Terminal, Drayage, Refrigeration, Car-Service, Storage and Elevation Charges, and Diversion, Reconsignment and Transit Privileges, and Allowances to Shippers must be shown in Tariffs.

¶ A. MANDATE OF THE STATUTE.

The Act to Regulate Commerce states that the schedules printed in accordance with its provisions by common carriers shall state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of the rates and charges, or the value of the service rendered to the shipper or consignee.⁵⁸

The Supreme Court has held that carriers separately state the terminal charges for delivering live stock beyond their own lines to the Union Stock Yards in Chicago, as required by the Act to Regulate Commerce, as amended June, 1906, where their tariff schedules inform shippers that the live-stock rates for transportation to Chicago, apply only to deliveries at the carriers' own yards and that, for transportation to the Union Stock Yards, a stated additional charge will be made, the amount of such charge being entered, not upon the general freight charges of the companies, but as a separate item.⁵⁹

¶ B. DUTY OF CARRIERS TO ESTABLISH JUST AND REASONABLE REGULATIONS.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) makes it the duty of all common carriers subject to its provisions to establish, observe and enforce just and reasonable regulations and practices affecting rates.

⁵⁸ See note 1, *supra*.

⁵⁹ *I. C. C. v. Stickney et al.* (1909), 215 U. S. 66, 54 L. ed. —, 30 Sup. Ct. 66, affirming 164 Fed. Rep. 638.

¶ C. PURPOSE OF REQUIREMENT OF PUBLICATION OF RULES AND REGULATIONS AFFECTING RATES.

Section 6 of the Act requires that carriers shall file tariffs with the Commission showing all their rates, fares and charges and all privileges and facilities granted or allowed, and also all rules and regulations which in anywise change or effect their rates or the value of the service rendered to the passenger or shipper. The purpose of this is to secure to the public knowledge of the rate to be charged by carriers for services rendered. No proper purpose would be served by stating the amount of the charge unless the services and privileges covered by that charge are also stated. Whenever any service is rendered beyond the ordinary receiving, transporting and delivering of freight the precise character of that service should appear in the printed schedule.^{59a}

¶ D. GENERAL RULES OF THE COMMISSION.

Rules or regulations which in any wise change, affect or determine any part or the aggregate of a carrier's rates, fares or charges must be shown separately upon the carrier's posted schedules of rates, fares and charges; and any such rules or regulations promulgated by the carrier in circulars issued *independently of its rate schedules* and without making reference thereto are not lawfully in force. Rules and regulations which, if enforced, would result in changing or affecting rates or charges shown on published schedules must be notified to the public for the time required by law for the other rate changes. The notice should set forth the changes proposed to be made in the schedules then in effect, and such changes must be shown by printing new schedules or be plainly indicated upon the schedules in force at the time.⁶⁰

Any practice of a carrier which operates to alter, modify or change its rates must be fully and clearly set forth upon its published tariffs of rates and charges to be affected thereby.⁶¹

^{59a} Schultz-Hansen Co. v. Southern Pacific Co. et al. (1910), 18 I. C. C. R. 234.

⁶⁰ Suffern, Hunt & Co. v. I. D. & W. Ry. Co. et al., 7 I. C. C. R. 255.

⁶¹ Spillers & Co. v. L. & N. Rd. Co. (1899), 8 I. C. C. R. 364, follow-

The Interstate Commerce Commission, by virtue of its power to modify the requirements of the Act as to the publication, posting and filing of tariffs and to determine and prescribe their form, has made the following rulings:

Each carrier must publish, "with proper I. C. C. numbers, post, and file separate tariffs which shall contain in clear, plain and specific form and terms all the terminal charges and allowances, such as arbitraries, switching, icing, storage, elevation, diversion, reconsignment, transit privileges, and car service, together with all other privileges, charges, and rules which in any way increase or decrease the amount to be paid on any such shipment as stated in the tariff which contains the rate applicable to such shipment, or which increase or decrease the value of the service to the shipper. Such tariffs must stipulate clearly the extent of such privileges and the charges connected therewith, and shall also state whether or not the rate published by the initial carrier from point of origin to ultimate destination will apply. If the through rate does not apply it must be as of the date of shipment from point of origin."⁶²

"If such privilege is granted or charge is made in connection with the rate under which the shipment moves from point of origin, the initial carrier's tariff which contains such rate must also show the privilege or the charge or must state that shipments thereunder are entitled to such privileges and subject to such charges according to the tariffs of the carriers granting the privileges or performing the service, as 'lawfully on file with the Interstate Commerce Commission.'"⁶³

¶ E. RECONSIGNMENT PRIVILEGES AND RULES.

The privilege of reconsignment is of value to the shipper, and in order to avoid discrimination it is necessary for the

ing *Colorado Fuel & Iron Co. v. Southern Pac. Co.*, 6 I. C. C. R. 488, and *Suffern, Hunt & Co. v. I. D. & W. R. Co.*, 7 I. C. C. R. 255; see also *Amer. Warehousemen's Association v. Ill. Cent. Rd. Co. et al.* (1898), 7 I. C. C. R. 556.

⁶² Rule 10, Tariff Circular 17-A.

⁶³ *Ibid.*

carrier that grants such privilege to publish in its tariff that fact together with the conditions under which it may be used and the charge that will be made therefor. Such rules should be stated in terms that are not open to misconstruction.⁶⁴ Some carriers do not count a change of consignee which does not involve a change of destination as a reconsignment, while others do consider it a reconsignment and charge for it as such.⁶⁵ The Commission holds the view that without specific qualifications, the term "reconsignment" includes changes in destination, routing, or consignees.⁶⁶ If a carrier wishes to distinguish between such changes in its privileges or charges it must so specify in its tariff rules.⁶⁷

The privileges embodied in a separate reconsignment tariff issued by one carrier cannot be availed of, or applied to movements, under a joint tariff to which that carrier and two others are named as parties, unless the latter tariff, by express reference to the former, so provides.⁶⁸

¶ F. TERMINAL CHARGES.

The rates which carriers are required by the statute to publish, file and adhere to without deviation cover, not merely the carriage, but services in receiving and delivering the property as well.⁶⁹

It is not unlawful for a carrier in its schedule of rates to segregate its rates so as to make a distinct charge for transportation and a separate charge for terminal service.⁷⁰ However, where a carrier undertakes to carry freight at a given rate to a certain point, the presumption is that such rate includes adequate compensation for terminal services.⁷¹

⁶⁴ Rule 74, Tariff Circular 17-A.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

⁶⁷ *Ibid.*

⁶⁸ *Washington Broom & W. W. Co. v. C. R. I. & P. Ry. Co.* (1909), 15 I. C. C. R. 219.

⁶⁹ *Phelps & Co. v. T. & P. Ry. Co.* (1893), 4 I. C. R. 44, 6 I. C. R. 36, 4 I. C. C. R. 363.

⁷⁰ *I. C. C. v. C. B. & Q. Ry. Co.* (1902), 186 U. S. 320; 22 Sup. Ct. Rep. 824; 42 L. ed. 1182.

⁷¹ *I. C. C. v. C. B. & Q. Ry. Co.*, 186 U. S. 320, 22 Sup. Ct. 824, 42 L. ed. 1182.

¶ G. REFRIGERATION CHARGES.

When charges for refrigeration are applied in the transportation of perishable freight, such charges should be published and filed with the Commission and adhered to exactly as all other charges for transportation are published and observed. The same considerations of justice and public policy, which require this in case of the freight rate, apply to the refrigeration charge.⁷²

A railroad company engaged in interstate commerce in its schedules of rates filed with the Interstate Commerce Commission pursuant to the Act to Regulate Commerce, may state separately its rates for the carriage of ordinary commodities of a particular class and its charge for icing cars when commodities are of a character requiring to be shipped under refrigeration.⁷³ The Commission has the same jurisdiction to inquire into the justice and reasonableness of refrigeration charges as of any other charge for the transportation of passengers or property.⁷⁴

¶ H. TARIFFS REGULATING SWITCHING OR TERMINAL CHARGES BETWEEN CARRIERS.

See *Section 491, post.*

¶ I. DEMURRAGE ON INTERSTATE SHIPMENTS.

In General.

The Act to Regulate Commerce requires that carriers shall publish, post, and file "all terminal charges * * * which in any wise change, affect, or determine * * * the value of the service rendered to the * * * shipper or consignee," and all such charges become a part of the "rates and charges" which the carriers are required to demand, collect, and retain. Such terminal charges include demurrage charges.⁷⁵

⁷² In the Matter of Transportation and Refrigeration of Fruit, etc., 10 I. C. C. R. 360; same, 11 I. C. C. R. 129.

⁷³ Knudsen-Ferguson Fruit Co. v. Mich. Cent. R. Co. (1906), 148 Fed. Rep. 968, 79 C. C. A. 46; writ of certiorari denied by Supreme Court in 204 U. S. 671, 51 L. ed. 672, 27 Sup. Ct. Rep. 786.

⁷⁴ In the Matter of Charges for Transportation and Refrigeration of Fruit (1905), 11 I. C. C. R. 129.

⁷⁵ Rule 75, Tariff Circular 17-A.

On March 16, 1908, the Commission decided that demurrage rules and charges applicable to interstate shipments are governed by the Act to Regulate Commerce, and therefore are within its jurisdiction and not within the jurisdiction of State authorities. Any other view would open a wide door for the use of such rules and charges to effect the discriminations which the Act prohibits.⁷⁶

Demurrage rules and charges must be observed as strictly as transportation rules and charges. The Commission cannot, therefore, recognize as lawful any rule governing demurrage, the application of which is dependent upon the judgment of some person, or which provides for exemption therefrom in certain exigencies in the creation of which the carrier has no part.⁷⁷

The requirements of the law with respect to the publication, posting and filing of "all terminal charges, * * * and all other charges which the Commission may require" removes from the carrier and from the shipper the right which existed under the common law to contract in reference to demurrage charges on any basis other than that specifically set forth in the carrier's published tariffs.^{77a}

Failure of Carriers to make Reference in Tariff of Rates to Car-Service Tariff.

In a particular case⁷⁸ the car-service tariff, which named the demurrage rules, was properly filed and posted and was well known to the shippers. It was enforced against the public generally. The tariff of rates did specify that the movement of traffic thereunder would be subject to car-service rules, and only those filed and published, therefore, could apply. The mere failure to refer by number to the car-service tariff in the

⁷⁶ Rule 75, Tariff Circular 17-A.

⁷⁷ Ibid.

^{77a} Peale, Peacock & Kerr v. C. R. R. Co. of N. J. (1910), 18 I. C. C. R. 25.

⁷⁸ Cudahy Packing Co. v. C. & N. W. Ry. Co. (1907), 12 I. C. C. R. 446.

tariff of rates could in no way relieve the complainant shipper from the payment of demurrage.

¶ J. PUBLICATION OF TRANSIT PRIVILEGES AND RULES AND REGULATIONS AFFECTING THE SAME.

The statute requires that the established schedules shall show "all privileges or facilities granted or allowed and any rules or regulations which in any wise affect * * * the value of the services rendered to the * * * shipper or consignee."⁷⁹ Privileges such as milling, sorting and mixing or blending freight in transit materially affect the value to the shipper and the cost to the carrier of the transportation and should be shown in the published tariffs.⁸⁰ A transit privilege being of value to the shipper, in order to avoid discrimination it is necessary for a carrier that grants such privilege to publish in its tariffs that fact, together with the conditions under which it may be used and the charge that will be made therefor. Such rules should be stated in terms that are not open to misconstruction.⁸¹

If stop-over privileges are granted for any purpose, all the facts and circumstances connected therewith should be clearly stated in the published tariff, so that the public generally may enjoy their benefits.⁸²

Whether the transit privilege is granted to grain, cotton, or other commodities, the fact should be plainly stated upon the tariff, together with the conditions upon which the privilege will be allowed.⁸³

¶ K. ABSORPTION OF SWITCHING CHARGE.

No switching or other terminal charge should be allowed by a carrier except under a plain and specific tariff provision therefor.⁸⁴

⁷⁹ See note 1, *supra*.

⁸⁰ *Shiel & Co. v. Ill. Cent. Rd. Co. et al.* (1907), 12 I. C. C. R. 210.

⁸¹ See note 64, *supra*.

⁸² *Re Rates and Practices of M. & O. Rd. Co.* (1903), 9 I. C. C. R. 373.

⁸³ *Central Yellow Pine Association v. V. S. & P. Rd. Co. et al.* (1904), 10 I. C. C. R. 173.

⁸⁴ *Leonard et al. v. C. M. & St. P. Ry. Co.* (1907), 12 I. C. C. R. 492.

¶ L. RULES PRESCRIBING MINIMA AND MAXIMA WEIGHTS AND REGULATIONS AFFECTING SAME MUST BE STATED IN CARRIERS' SCHEDULE.

The sixth section of the Act to Regulate Commerce provides that every common carrier subject to its provisions shall keep open to public inspection schedules showing the rates and fares and charges which are in force at the time; that the "schedules posted as aforesaid by any common carrier shall contain the classification of freight in force and shall also state separately the terminal charges, and any rules or regulations which in any wise affect or determine any part of the aggregate of such aforesaid rates, fares, and charges." Rules fixing maxima and minima weights on commodities come within this statute. The railroads contended that the word "separately" authorizes the issuance of circulars containing rules or regulations independently of and without reference to the rate sheets. In that part of Section 6, the Act specifies what the schedules of rates, fares, and charges shall contain, and what they shall state, but separate schedules are not thereby authorized for rules or regulations, nor for terminal charges. All that the word "separately" can be construed to mean in the connection in which it is used, is that the transportation charges and the terminal charges and any rules or regulations, etc., shall be separately stated on the schedules of rates, fares, and charges. Whether a rule or regulation concerning transportation can lawfully be established by the issuance of a schedule or document which neither prescribes rates, fares, or charges, nor refers to any rate or fare schedule, depends upon the nature of the rule or regulation. If rules or regulations "in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges," they must be stated *upon* the schedules of such rates, fares, and charges. This is the plain reading of the statute and to any one at all familiar with the large number of rate sheets in force for interstate transportation from the great majority of railroad stations the necessity of connecting the rate with any rule or regulation affecting that rate is obvious.⁸⁵

⁸⁵ See note 60, *supra*.

The minimum weight upon which carload rate is based is a part of the rate, because the charges on the shipment are determined by such minimum weight. The publication, posting, and filing of the rate and of the minimum weight are therefore equally necessary, and it is also equally necessary that both be observed.⁸⁶

¶ M. STORAGE CHARGES.

The storage of freight is of considerable importance, and where goods are held in warehouses for part-lot distribution is of great value to shippers, and especially so to the class of manufacturers or dealers largely engaged in supplying those staple commodities which are in common demand through the country.⁸⁷ To the extent of its value such privilege lessens the aggregate compensation paid by shippers to carriers for transportation and terminal services.⁸⁸ The charges made for such service, and all rules and regulations which in any wise change, affect, or determine such aggregate compensation, are plainly required by the statute to be shown by the carriers upon their published rate schedules.⁸⁹

Storage rates and regulations enforced by common carriers subject to the Act to Regulate Commerce must be published at their stations and filed with the Commission.⁹⁰

The privilege embodied in a separate storage tariff issued by one carrier cannot be availed of, or applied to movements, under a joint tariff to which that carrier and two others are named as parties, unless the latter tariff by express reference to the former so provides.⁹¹

¶ N. DRAYAGE OR TRANSFER CHARGES.

The Act does not bar a carrier from providing for costs of

⁸⁶ Rule 66, Tariff Circular 17-A.

⁸⁷ *American Warehousemen's Association v. Ill. Cent. Rd. Co.* (1898), 7 I. C. C. R. 556; see also *Penna. Millers' State Association v. P. & R. Ry. Co. et al.*, 8 I. C. C. R. 531.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Blackman, Jr., v. Southern Ry. Co.*, 10 I. C. C. R. 352.

⁹¹ See note 68, *supra*.

transfer in making delivery to a certain carrier, but if it so provides it must publish and file a tariff showing where the transfer will be made, the kind of transfer service required, and the charges to be exacted therefor.⁹²

A shipper is entitled to notice of a transfer charge other than one coming to him through the collection of the charge from his consignee, and as he is not obliged to follow his shipment and make the transfer himself, he is entitled to the protection afforded by a published definite rate.⁹³

¶ O. ALLOWANCES TO SHIPPERS.

Allowances to Owners of Tank Cars.

Mileage or other allowance paid by carriers to the owners of private cars, such as tank cars, refrigerator cars, stock cars, etc., should be published and filed the same as all other rules or regulations affecting rates.

Allowance for Grain Doors Furnished by Shippers.

A carrier may not lawfully reimburse shippers for the expense incurred in attaching grain doors to box cars unless expressly so provided in its tariff. There is a material difference between the furnishing of service or facilities to carriers by one who is not a shipper and the furnishing of the same facilities or services by one who is a shipper.⁹⁴

Allowances for Car-Door Boards used in the Transportation of Coal in Stock Cars.

The requirement of Section 6 that the schedule posted and filed shall contain "any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares and charges, or the value of the service rendered to the passenger, shipper or consignee," plainly requires publication of allowances of this character.

⁹² Schwager & Nettleton v. Gr. Nor. Ry. Co. (1907), 12 I. C. C. R. 521.

⁹³ Schwager & Nettleton v. Gr. Nor. Ry. Co., 12 I. C. C. R. 521.

⁹⁴ Rule 78, Con. Rul. Bul. No. 4 (June 1, 1908).

The carrier could at no time make an allowance at variance with its tariff, and no private understanding or agreement between parties can alter the requirement of the statute in this respect.⁹⁵

Expense Incurred in Preparing Cars for Shipments can not be paid by Carrier in the absence of Tariff Provisions therefor.

Not having box cars available for the movement of machinery, cattle cars were supplied at the request of the shipper, who lined them with tar paper and felt in order to protect his shipments from weather conditions. *Held*, That in the absence of tariff authority the carrier cannot lawfully reimburse the shipper for the expense so incurred.⁹⁶

¶ P. RULES GOVERNING LOADING AND UNLOADING OF FREIGHT.

Services rendered by carriers in loading and unloading car-load freight and charges for such services are analogous to other terminal services and charges such as demurrage, milling-in-transit, storage, switching, etc., and the charges for and the precise character must be published in the tariffs.^{96a}

§ 462. Carriers prohibited from engaging in Transportation subject to the Act to Regulate Commerce unless they file and publish Rates and Charges thereon.

No carrier is permitted to engage in the transportation of property, as defined by the Act, unless the rates and charges upon which the same is transported by said carrier have been filed and published in accordance with the provisions of the Act.⁹⁷

§ 463. Tariffs distinguishing between Shipments handled by Steam and Electrical Power.

An amendment to a tariff provided: "The above rates will

⁹⁵ Victor Fuel Co. v. A. T. & S. F. Ry. Co., 14 I. C. C. R. 119.

⁹⁶ Rule 19, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

^{96a} Schultz-Hansen Co. v. Southern Pacific Co. et al. (1910), 18 I. C. C. R. 234.

⁹⁷ See note 1, *supra*.

only apply on shipments by steam power and will not apply when handled by electrical power." *Held*, That the limitation of the rates to shipments handled by steam power is unlawful and must be eliminated from the tariff.⁹⁸

§ 464. Phraseology used in Tariffs.

¶ A. TARIFFS MUST BE PLAIN AND INTELLIGIBLE.

The Act to Regulate Commerce contemplates not only just and reasonable rates, but plain and intelligent rates.

Complication, intricacy, and involution invite, if they do not intend, injustice, inequality and discrimination.

A rate or a tariff published and filed with the Commission cannot be held to be legal merely because of that fact; it must also be plain and intelligible.⁹⁹

The only satisfactory method of publishing rates is to definitely state the charges fixed between points clearly specified without burdening or confusing the public with involved calculations, or with scrutinizing a series of supplements to determine whether a particular rate has been changed since the original tariff was issued.¹⁰⁰

It is the duty of common carriers, under the Act, to print, publish and file tariffs showing rates which are so simplified that persons of ordinary comprehension can understand them; and a notation in the tariff of one carrier making reference to the tariff of some competing carrier does not meet the requirements of the law that a rate charged shall be published and filed.¹⁰¹

The Commission in construing the meaning of the phrase "import traffic" stated that, "whatever is within the meaning of the term 'import traffic' must necessarily be a matter of construction, and in arriving at such construction the point of origin of the traffic, the method and mode of transportation

⁹⁸ Rule 2, Con. Rul. Bul. No. 4 (Nov. 4, 1907).

⁹⁹ Porter et al. v. St. L. & S. F. R. R. Co. et al., 15 I. C. C. R. 1.

¹⁰⁰ Colorado Fuel & Iron Co. v. Southern Pacific Co. et al. (1895), 6 I. C. R. 488.

¹⁰¹ See note 5, supra.

into this country, and the point of destination must be considered. The phrase 'import traffic' is so vague and indefinite as to invite rather than prevent numerous controversies as to what is and what is not covered thereby.

"The application of a tariff should be stated so clearly as to prevent misinterpretation, misunderstanding, or misconstruction. 'Import traffic' may be import traffic when taken from the ships' side, and it may be import traffic after it has been stored at the port of entry for a substantial period, and it might be claimed still to be import traffic after it had been merchandised at the port of entry. It is therefore essential if misunderstandings and misinterpretations are to be avoided, that the carriers shall clearly define the phrase 'import traffic' and similar phrases when used in their tariffs."¹⁰²

¶ B. TARIFFS ARE TO BE CONSTRUED ACCORDING TO THEIR LANGUAGE.

The law compels carriers to publish and post their schedules of charges upon the theory that they will be informative. A shipper who consults them has a right to rely upon their obvious meaning. He cannot be charged with knowledge of the intention of the framers or the carrier's canons of construction or of some other tariff not even referred to in the one carrying the rate. The public posting of tariffs will be largely useless if the carrier's interpretation is to be dependent upon tradition and the arbitrary practices of a general freight office.

The Commission has long since repudiated the suggestion that railroad officials may be looked to as authority for the construction of their tariffs;¹⁰³ in which Judge Cooley stated that: "A classification sheet is put before the public for its information. It is supposed to be expressed in plain terms, so that the ordinary business man can understand it, and, in connection with the rate sheets, can determine for himself what he can be lawfully charged for transportation. The committee who prepared this classification have no more authority in construc-

¹⁰² Payne et al. v. M. L. & T. R. & S. Co. et al., 15 I. C. C. R. 185.

¹⁰³ Hurlburt v. L. S. & M. S. Ry. Co., 2 I. C. C. R. 122; 2 I. C. R. 81.

tion than anybody else, and they must leave the document, after they have given it to the public, to speak for itself."

Tariffs are construed according to their language. The Commission refuses to recognize any other criterion.¹⁰⁴

¶ C. TECHNICAL TERMS AND PHRASES, AS USED IN TARIFFS,
DEFINED.

The term "per ton" and "net ton," when used in tariffs, will, in the absence of qualifying words, be held to mean a ton of 2,000 pounds. The terms "gross ton" and "long ton" and "ton of 2,240 pounds" will be held to mean a ton of 2,240 pounds.¹⁰⁵

¶ D. LIMITING USE OF THE TERMS "COMMON POINTS," "GRAIN PRODUCTS," AND SIMILAR PHRASES IN TARIFFS.

The terms "common points," "Southeastern territory," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which rates named therein apply, unless a full list of such points is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.¹⁰⁶

The terms "grain products," "forest products," "petroleum and its products," "cottonseed products," or similar terms must not be used in any tariff for the purpose of indicating the articles to which the rates apply, unless a full list of the articles intended to be included in and covered by such terms is printed in the tariff or specific reference is given to I. C. C. number of the issue that contains such list.¹⁰⁷

¶ E. IMPROPER AND UNLAWFUL TARIFF PROVISIONS.

A carrier's tariff contained the following rule:

"The ——— Railway reserves the right to route through to destination property delivered to it for transportation at the through rates shown in this tariff; and every carrier par-

¹⁰⁴ Newton Grain Co. v. C. B. & Q. Rd. Co. et al., 16 I. C. C. R. 341.

¹⁰⁵ Rule 131, Con. Rul. Bul. No. 4 (Jan. 4, 1909).

¹⁰⁶ Rule 6, Tariff Circular 17-A.

¹⁰⁷ Ibid.

ticipating in such transportation shall have the right, in cases of necessity, including floods, embargoes, and blockades, to forward said property by any carrier between the point of shipment and the point to which the rate is given. All additional risks and increased expense incurred by reason of change in route in cases of necessity, including floods, embargoes and blockades, shall be borne by the owner of the goods and be a lien thereon."

Held, That this rule is improper and unlawful.¹⁰⁸

A tariff contained a rule providing that:

"When freight cannot be disposed of at a point held for sufficient amount to realize by sale both freight and car service, or storage charges, demurrage charges may be refunded, waived, or canceled."

Held, That the performance of a transportation service determines the obligation of the carrier to collect and of the shipper to pay the published rates therefor and no subsequent fact, having no relation to the service, can lawfully be made the basis for a refund or other departure from such rules. The provision is therefore unlawful *per se* and cannot be accepted as authority for a waiver, refund, or cancellation of the tariff charges even as to a shipment made while the provision was contained in the published tariff.¹⁰⁹

§ 465. Different Kinds of Freight Tariffs defined.

¶ A. LOCAL TARIFFS.

Local tariffs apply only to traffic between points on the lines of the issuing carrier.¹¹⁰

¶ B. JOINT TARIFFS.

Joint tariffs are those which contain or are made up from rates that extend over the lines of two or more carriers and that are made by agreement between such carriers.¹¹¹ They

¹⁰⁸ Rule 146, Con. Rul. Bul. No. 4 (Feb. 8, 1909).

¹⁰⁹ Rule 145, Con. Rul. Bul. No. 4 (Feb. 8, 1909).

¹¹⁰ Rule 29, Tariff Circular 17-A.

¹¹¹ Tariff Circular 17-A.

imply an agreement between two or more roads for through carriage at a single aggregate charge which is usually less than the sum of their separate charges.¹¹² They contain rates applying to traffic between points on the lines of two or more carriers.¹¹³

¶ C. BASING TARIFFS.

Basing tariffs contain rates to or from certain specified basing points where no specific through or joint rate exists, together with definite rules and regulations as to the use and application of such basing rates.¹¹⁴

¶ D. INTERDIVISION TARIFFS.

Interdivision tariffs apply only to traffic between points on different divisions of the line of the issuing carrier.¹¹⁵ They may, however, under proper concurrences, shown in the tariff, include rates to and from points on directly connecting subsidiary lines.¹¹⁶

¶ E. PROPORTIONAL TARIFFS.

Proportional tariffs establish rates of carriage which are lower between given points when the traffic has undergone transportation before reaching the first point, or is to be further transported after reaching the second, than the rates charged on like traffic which originates at one of such points and terminates at the other.¹¹⁷

¶ F. DISTANCE TARIFFS.

A distance tariff is made up of a graduated scale of rates applying usually between points in an undeveloped or a local territory, which are based purely on distance.

¹¹² Ninth Annual Report of I. C. C. (1895).

¹¹³ See note 110, *supra*.

¹¹⁴ *Ibid*.

¹¹⁵ Rule 29, Tariff Circular 17-A.

¹¹⁶ *Ibid*.

¹¹⁷ In the Matter of Form and Contents of Rate Schedules, 4 I. C. R. 698; 6 I. C. C. R. 267.

§ 466. Tariffs must be printed.

The Act requires that all schedules of rates shall be plainly printed in large type.¹¹⁸

The Commission has ruled that all tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph, or other printing-press process may be used. Alterations in writing or erasures must not be made in tariffs before filing.¹¹⁹

Reproductions by hectograph or similar process, typewritten sheets, or proof sheets must not be used for posting or filing.¹²⁰

§ 467. Form and Size of Freight Tariffs.

All tariffs must be in book, sheet, or pamphlet form, and of size 8 x 11 inches. Loose-leaf plan may be used, so that changes can be made by reprinting and inserting a single leaf.¹²¹

§ 468. Information to be shown on Title-Page of every Freight Tariff.

The Commission has ruled that the title-page of every freight tariff shall show the following information:

¶ A. NAME OF CARRIER.

The name of issuing carrier, carriers, or agent.¹²²

¶ B. I. C. C. NUMBER AND CANCELLATIONS.

I. C. C. number of tariff in bold type on upper right-hand corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs canceled thereby. If the numbers of canceled tariffs are so large as to render it impracticable to thus enter them on the title-page, they must be shown immediately following the table of contents, and specific reference to such list must be entered on the title-page immediately under the I. C. C. number of the tariff. Serial numbers of carriers

¹¹⁸ See note 1, *supra*.

¹¹⁹ Rule 1, Tariff Circular 17-A.

¹²⁰ *Ibid*.

¹²¹ Rule 2, Tariff Circular 17-A.

¹²² Rule 3, Tariff Circular 17-A.

may, if desired, be entered below the upper marginal line of the title-page. Separate serial I. C. C. numbers will be used for freight and passenger tariffs.¹²³

¶ C. KIND OF TARIFF.

Whether tariff is local, joint, proportional, or a combination of the same; and whether class, commodity, or a combination of both.¹²⁴

¶ D. TERRITORY.

The territory or points from and to which the tariff applies, briefly stated.¹²⁵

¶ E. REFERENCE TO GOVERNING CLASSIFICATION AND EXCEPTION SHEETS.

Reference by name and I. C. C. number to the classification and exception sheets governing the tariff. Following form will be used:

“Governed, except as otherwise provided herein, by the Classification,, I. C. C. No. supplements thereto and reissues thereof; and by exceptions to said classification I. C. C. No. supplements thereto and reissues thereof.”

A tariff is not governed by a classification or exceptions thereto except when and to the extent stated on the tariff.¹²⁶

¶ F. DATES.

Date of issue and date effective. Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice.¹²⁷

¶ G. EXPIRATION NOTICE.

A provision in a tariff that the same, or any part thereof, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The

¹²³ Rule 3, Tariff Circular 17-A.

¹²⁴ Ibid.

¹²⁵ Ibid.

¹²⁶ Rule 3, Tariff Circular 17-A.

¹²⁷ Ibid.

Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way. On such tariffs the term "Expires, unless sooner canceled, changed, or extended," must be used.¹²⁸

¶ H. STATUTORY NOTICE OR AUTHORITY FOR SHORTER NOTICE
MUST BE SHOWN.

The Act to Regulate Commerce requires that all changes in rates, or in rules that affect rates, shall be filed with the Commission at least thirty days before the date upon which they are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title page of every tariff or supplement must show full thirty days' notice, except as otherwise provided.¹²⁹

On every tariff or supplement that is issued on less than thirty days' notice by permission or order or regulation of the Commission, notation that it is issued under special permission or order of the Interstate Commerce Commission, "No. . . . , of [date], or by authority of Rule , Tariff Circular [give current number], or by authority of decision of the Commission in case No."¹³⁰

¶ I. NOTICE OF SUPPLEMENTS.

On the upper left-hand corner of the tariffs of less than 5 pages and on tariffs issued in loose-leaf form, the words: "No supplement to this tariff will be issued except for the purpose of canceling the tariff." On tariffs containing 5 and not more than 16 pages, inclusive: "Only one supplement to this tariff will be in effect at any time." On tariffs containing 17 and not more than 111 pages, inclusive: "Only two supplements to this tariff will be in effect at any time." On

¹²⁸ Rule 3, Tariff Circular 17-A.

¹²⁹ See note 13, *supra*.

¹³⁰ See note 122, *supra*.

tariffs containing over 111 pages: "Only three supplements to this tariff will be in effect at any time."¹³¹

¶ J. OFFICER ISSUING TARIFF.

Name, title, and address of the officer by whom the tariff is issued.¹³²

§ 469. Information that Freight Tariffs shall contain.

The Commission has ruled that freight tariffs in book or pamphlet form shall contain the following information, and in the order named:

¶ A. TABLE OF CONTENTS.

A full and complete statement in alphabetical order, of the exact location where information under general headings, by subject, will be found, specifying page or item numbers. If a tariff contains so small a volume of matter that its title page or its interior arrangement plainly discloses its contents, the table of contents may be omitted.¹³³

¶ B. PARTICIPATING CARRIERS.

Names of issuing carriers, including those for which joint agent issues under power of attorney, and names of carriers participating under concurrence, both alphabetically arranged. If there be not more than ten participating carriers their names may be shown on the title page of the tariff. The form and number of power of attorney or concurrence by which each carrier is made party to the tariff must be shown.¹³⁴

¶ C. INDEX OF COMMODITIES.

Alphabetically arranged and complete index of all commodities upon which commodity rates are named, preceded by a paragraph, viz.: "Following list enumerates only such articles as are given specific rates; articles not specified will take class rates." All of the items relating to different kinds or species of the same commodity will be grouped together.

¹³¹ See note 122, supra.

¹³² Ibid.

¹³³ Rule 4, Tariff Circular 17-A.

¹³⁴ Rule 4, Tariff Circular 17-A.

For example, all items of coal under "Coal," and descriptive word or words following, as "Coal," "Coal—Anthracite," "Coal—Bituminous," etc.¹³⁵

¶ D. INDEX TO GENERAL COMMODITY TARIFF.

The index to a general commodity tariff shall also include in alphabetical order all articles upon which commodity rates are named in other tariffs applying from any point of origin to any point of destination named in the tariff, and with such entry shall be shown the number or numbers of tariffs in which such rates are found. For example, "Lime, I. C. C. No. 122," or "Staves, I. C. C. No. 1042." Carriers' tariff numbers may be also shown.¹³⁶

¶ E. COMMODITY ITEM CONTAINING LIST OF ARTICLES TAKING ONE RATE NEED BE INDEXED BUT ONCE, PROVIDED REFERENCE IS GIVEN TO LIST OF ARTICLES EMBRACED.

A commodity item which refers to a list of articles taking one commodity rate need be indexed but once, provided reference is given to the item or the I. C. C. number of the issue that contains list of the articles embraced in the term. For example, "Agricultural implements, as described in item of this tariff," or "as described in Western Classification, I. C. C. No.;" or "Packinghouse products, as described in Tariff, I. C. C. No." When such specific reference to list of articles embraced in the term is given, the several articles so embraced need not be indexed separately.¹³⁷

¶ F. TARIFF MUST CONTAIN ALL RATES ON COMMODITIES INCLUDED IN TARIFF AND BETWEEN SAME POINTS.

A local tariff on a single commodity, or a few commodities, shall contain all of that carrier's commodity rates on such commodity or commodities applying from any point of origin to any point of destination named in the tariff; and a joint commodity tariff shall contain all of the initial carrier's com-

¹³⁵ Rule 4, Tariff Circular 17-A.

¹³⁶ Ibid.

¹³⁷ Rule 4, Tariff Circular 17-A.

modity rates on the same commodity or commodities applying from any point of origin to any point of destination named in the tariff via the route or routes authorized by the tariff. If there be not more than ten such commodities they may be named on the title page of the tariff.¹³⁸

¶ G. ALPHABETICAL ARRANGEMENT OF COMMODITY RATES TO EACH DESTINATION.

If all of the commodity rates to each destination in the tariff are arranged alphabetically by commodities, and plain reference thereto is given in table of contents, further or other index of commodities may be omitted from that tariff, provided that, if the issuing carrier, or a participating carrier, has in other tariff or tariffs commodity rates applying from any point of origin to any point of destination named in the tariff, a complete list in alphabetical order by commodities of such other tariffs, together with description of character of traffic, territory or points of origin and of destination, and the I. C. C. numbers of tariffs containing such commodity rates shall be shown in the first part of the tariff and shall be specifically referred to in the table of contents.¹³⁹

¶ H. COMMODITY RATE NOT INDEXED IS NOT A LAWFUL RATE.

Excepting such as appear in a tariff or a supplement to a tariff which does not require an index, a commodity rate that is not included in the index will be treated as not having been published and cannot lawfully be used.

¶ I. INDEX OF STATIONS.

An alphabetical index of points from which rates apply, and an alphabetical index of points to which rates apply, together with names of States in which located. When practicable, the index numbers of points and pages upon which rates will be found, or item numbers in which rates from or to such points appear, should be shown. If there be not more than 12 points of origin or 12 points of destination, the

¹³⁸ Rule 4, Tariff Circular 17-A.

¹³⁹ Rule 4, Tariff Circular 17-A.

name of each may, if practicable, be specified on title page of tariff.¹⁴⁰

If a tariff is arranged by groups of origin or destination, by bases, or by bases numbers, the indices must show for each point the proper group, basis, or basis number.

¶ J. ALPHABETICAL ARRANGEMENT OF POINTS IN RATE TABLES.

If points of origin or of destination are shown throughout the rate tables in continuous alphabetical order or are shown alphabetically by States and such States are alphabetically arranged, or are shown by groups alphabetically arranged, no index of points of origin or destination will be required. But when such alphabetical arrangement in rate tables is used the table of contents shall indicate the pages upon which points are so shown, and when arranged by States or groups shall give specific reference to the pages on which rates to or from points in each State or group will be found.¹⁴¹

If a tariff constructed so as to state rates by groups or bases, and also states specific rates to or from individual points, it shall contain an alphabetical index of such individual points and also alphabetical lists of the points in such groups, or reference to the I. C. C. number of issue which contains lists of such group points.

¶ K. GEOGRAPHICAL DESCRIPTION.

Geographical description of application of tariff may be used only when the tariff applies to or from all points in one or more States or Territories or when it applies to or from all points in a State or Territory except those specified. But such list of exceptions for a single State or Territory may not exceed one-third of the number of points in that State or Territory to or from which (*as the case may be*) the tariff will apply. For example, a tariff may state that it applies from all points in New York, Pennsylvania, and New Jersey, and from all points in Delaware, except (*here give alphabetical*

¹⁴⁰ Rule 4, Tariff Circular 17-A.

¹⁴¹ Ibid.

list of excepted points), and from the following points in Ohio (*here give alphabetical list of Ohio points*).¹⁴²

¶ I. TERRITORIAL OR GROUP DESCRIPTIONS.

Traffic territorial or group description may be used to designate points to or from which rates named in the tariff apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list. In this list the points in each traffic territorial or group description shall be arranged alphabetically, and the name or names of roads upon which points are located must be shown; or all of the points in traffic territories or groups named in the tariff may be included in one alphabetical index, provided (1) that points of origin and points of destination are shown separately, alphabetically; (2) that the name or names of roads upon which points are located and the traffic territorial or group description in which they belong are shown opposite the several points.¹⁴³

¶ M. REFERENCE MARKS AND ABBREVIATIONS.

Explanation of reference marks and technical abbreviations used in the tariff, except that a special rule or provision applying to a particular rate will be shown in connection with and on same page with such rate.¹⁴⁴

¶ N. LIST OF EXCEPTIONS.

List of exceptions, if any, to the classification governing the tariff which are not contained in exception sheets referred to on title page.¹⁴⁵

¶ O. EXPLANATORY STATEMENTS.

Such explanatory statements in clear and explicit terms regarding the rates and rules contained in the tariff as may

¹⁴² Rule 4, Tariff Circular 17-A.

¹⁴³ Ibid.

¹⁴⁴ Rule 4, Tariff Circular 17-A.

¹⁴⁵ Ibid.

be necessary to remove all doubt as to their proper application.¹⁴⁶

¶ P. RULES GOVERNING THE TARIFF.

Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the rates named in the tariff shall be entered, except that a special rate applying to a particular rate shall be shown in connection with and on the same page with such rate.¹⁴⁷

¶ Q. NO RULE SHALL AUTHORIZE SUBSTITUTING RATE FOUND IN ANY OTHER TARIFF.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part.¹⁴⁸

¶ R. RULE FOR EXPLOSIVES.

Tariffs which contain rates for the transportation of explosives must also contain notice that such rates are applicable in connection and in compliance with the regulations governing the transportation of explosives fixed by the Interstate Commerce Commission. If tariff is governed by classification it will be sufficient to include this notice in the classification referred to as governing the tariff.¹⁴⁹

¶ S. TARIFF RULES AND REGULATIONS FILED AND POSTED MAY BE REFERRED TO IN OTHER SCHEDULES GOVERNED THEREBY.

A carrier or an agent may publish, under I. C. C. number, post, and file a tariff publication containing the rules and regulations which are to govern certain rate schedules, and such

¹⁴⁶ Rule 4, Tariff Circular 17-A.

¹⁴⁷ Ibid.

¹⁴⁸ Ibid.

¹⁴⁹ Rule 4, Tariff Circular 17-A.

publication may be made a part of such rate schedules by the specific reference, "Governed by rules and regulations shown in I. C. C., No."

When a tariff makes reference to another tariff the I. C. C. number of such other tariff must be given, and when such tariff referred to is the publication of another carrier or an agent, the initials of such other carrier or the name of such agent, respectively, must be shown in connection with the I. C. C. number.¹⁵⁰

A rate schedule may in like manner refer to another schedule for the governing rules and regulations.¹⁵¹

A schedule or a publication so referred to must be on file, with the Commission and be posted at every place where a schedule that refers to it is posted.¹⁵²

¶ T. RATE TABLES.

An explicit statement of the rates, in cents or in dollars and cents, per 100 pounds, per barrel or other package, per ton or per car, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Minimum carload weights must be specifically stated. Tariffs containing rates per ton must specify what constitutes a ton thereunder. A ton of 2,000 pounds must be specified as "net ton" or "ton of 2,000 pounds." A ton of 2,240 pounds must be specified a "gross ton," "long ton," or "a ton of 2,240 pounds." Complicated or ambiguous plans or terms must be avoided.¹⁵³

¶ U. ROUTES.

The different routes via which tariff applies may be shown, together with appropriate reference to application of rates. When a tariff specifies routing the rates may not be applied via routes not specified. A tariff may show the routing ordinarily and customarily to be used and may provide that, if

¹⁵⁰ Rule 4, Tariff Circular 17-A.

¹⁵¹ Ibid.

¹⁵² Ibid.

¹⁵³ Ibid.

from any cause shipments are sent via other junction points but over the lines of carriers parties to the tariff, the rates will apply.¹⁵⁴

A carrier is required by law to publish the rate and also to clearly indicate the route over which the published rate is applicable. When so published the rate named and the route designated stand as the law binding as well upon the shipper as upon the carrier.¹⁵⁵

§ 470. A Tariff is not governed by a Classification except when so Specified.

A tariff naming commodity rates on strawberries in carloads fixed a certain rate on a minimum of 100 crates and a lower rate on a minimum of 200 crates. The classification in that territory provided that carload rates would apply only when the carload is shipped from one station in one day by one shipper to one consignee and destination. The shipments in question belonged to different owners, but with the knowledge and consent of the carrier, and under the admitted intent of the tariff, were loaded and forwarded as carload shipments: *Held*, That they were entitled to the application of the lower rate on the basis of the 200-crate minimum.¹⁵⁶

§ 471. Commodity Rates shown in Tariffs must be Specific.

Commodity rates shown in tariffs must be specific and must not be applied to analogous articles.¹⁵⁷

§ 472. Alternative Use of Class or Commodity Rates.

¶ A. ALTERNATIVE RATES IN SECTIONAL TARIFF.

If the alternative use of class or commodity rates is necessary or desired in any instance it may be provided by including in different sections of one and the same tariff such class and commodity rates, and by including in each section the

¹⁵⁴ Rule 4, Tariff Circular 17-A.

¹⁵⁵ See note 31, *supra*.

¹⁵⁶ Rule 141, Con. Rul. Bul. No. 4 (Feb. 2, 1909).

¹⁵⁷ See note 106, *supra*.

specific rule: "If the rates in Section ... of this tariff make a lower charge on any shipment than the rates in Section ... of this tariff, the rates in Section ... will be applied."¹⁵⁸

¶ B. CARRIERS MAY NOT REPRODUCE OTHER CARRIER'S OR
AGENCY'S RATES FOR ALTERNATIVE USE.

No rates may be so included in a tariff for alternative use excepting such as the carrier or agent who issues the tariff is lawfully authorized to publish and change; that is, rates issued by another carrier or agency may not be reproduced by such alternative use.¹⁵⁹

¶ C. RULE FOR TARIFF WHICH DOES NOT PROVIDE FOR ALTERNATIVE USE OF RATES.

Each tariff that contains class rates and that is not constructed in sections for alternative use of rates, as provided in *Paragraph A, supra*, of this section, and that is issued or supplemented shall also contain a rule as follows:

Whenever a carload (or a less-than-carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in carload quantities (or less-than-carload quantities, as the case may be).¹⁶⁰

¶ D. RULE FOR TARIFF WHICH DOES PROVIDE FOR ALTERNATIVE USE OF RATES.

Each tariff that contains class and commodity rates and that is constructed in sections for alternative use of rates as provided in *Paragraph A, supra*, of this section, and that is issued or supplemented, shall contain a rule as follows:

Whenever a carload (or less-than-carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in carload quantities (or less-than-carload quantities, as the case may be), except when and in so far as alternative use of class and commodity rates are contained in separate sections of this tariff is specifically authorized herein.¹⁶¹

¹⁵⁸ Rule 7, Tariff Circular 17-A.

¹⁵⁹ Ibid.

¹⁶⁰ Ibid.

¹⁶¹ Rule 7, Tariff Circular 17-A.

¶ E. RULE IN CLASSIFICATION.

Each classification that is issued or supplemented shall contain a rule as follows:

Whenever a carload (or less-than-carload) commodity rate is established it removes the application of the class rates to or from the same points on that commodity in carload quantities (or less-than-carload quantities, as the case may be), except when and in so far as alternative use of class and commodity rates is specifically provided for by including in different sections of one and the same tariff such class and commodity rates, and by including in each section of such tariff the specific rule, "If the rates in Section of this tariff make a lower charge on any shipment than the rates in Section of this tariff the rates in Section will be applied."¹⁶²

§ 473. Amendments and Supplements to Tariffs.

¶ A. AMENDMENT AND SUPPLEMENT DEFINED AND FORM THEREOF.

A change in or addition to a tariff shall be known as an amendment, and, excepting amendments to tariffs of less than five pages, and amendments to tariffs issued in loose-leaf form, shall be printed in a supplement to the tariff and shall refer to the page or pages or item or items of the tariff, or of previous supplement, which it amends.¹⁶³

An amended item must always be printed in a supplement in its entirety as amended, and the items in each supplement shall be arranged in the same general order as the tariff which it amends.¹⁶⁴

¶ B. PARTICIPATING CARRIERS.

A supplement shall contain either a list of carriers participating therein, or shall state that the list of participating carriers is "as shown in tariff," or "as shown in tariff, except" [*here show alphabetically all additions to and eliminations from the original list that are effected by the supplement, or that have been effected by previous supplements*].¹⁶⁵

¹⁶² Rule 7, Tariff Circular 17-A.

¹⁶³ Rule 9, Tariff Circular 17-A.

¹⁶⁴ Ibid.

¹⁶⁵ Rule 9, Tariff Circular 17-A.

¶ C. SUPPLEMENT NUMBER AND CANCELLATIONS.

Supplements to a tariff shall be numbered consecutively as supplements to that tariff and must not be given separate or new I. C. C. numbers. Each supplement shall specify the supplement or supplements which it cancels, and shall also show on its title-page what supplements are in effect and that such effective supplements contain all changes. For example: "Supplement No. ... to I. C. C. No. ..." "Cancels Supplements Nos. ... and ..." "Supplements Nos. ... and ... are in effect and contain all changes." The term "Cancels conflicting portions" must not be used.¹⁶⁶

¶ D. SHOW EFFECTIVE DATE OF REISSUED ITEMS AND I. C. C. REFERENCE.

A tariff which contains reissued items brought forward from a previous issue which has not been in effect thirty days, or a supplement which brings forward reissued items without change from a former supplement or tariff, must not bear notation, "Effective at once, except as noted," but instead must bear the notation, "Effective, except as noted in individual items." Example: "Issued, 19..., Effective, 19..., except as noted in individual items." Reissued items brought forward without change must show in conspicuous form and convenient manner the following: "Reissue [*in black-face type*]; effective [*date upon which item became effective*] in I. C. C. No.," or "in Supplement No. to I. C. C. No." When the reissued item became effective in a former supplement to the same tariff the I. C. C. number of the tariff may be omitted, but the supplement number must be given.

Items reissued from publications that were on file prior to May 1, 1907, may show last date and reference prior to May 1, 1907.¹⁶⁷

¶ E. NUMBER OF SUPPLEMENTS IN EFFECT AT ONE TIME.

A tariff of less than five pages may have no supplement;

¹⁶⁶ Rule 9, Tariff Circular 17-A.

¹⁶⁷ Rule 9, Tariff Circular 17-A.

change therein may be made only by reissue. Not more than one supplement may be in effect at any time to a tariff containing five and not more than 16 pages. Not more than two supplements may be in effect at any time to a tariff containing 17 and not more than 111 pages. Not more than three supplements may be in effect at any time to a tariff containing more than 111 pages, and such third supplement may be issued only when the smaller of the two effective supplements to that tariff contains not less than 10 per centum of the number of pages in the tariff.¹⁶⁸

¶ F. AMOUNT OF MATTER SUPPLEMENT MAY CONTAIN.

Tariffs containing five or more pages, including title-pages and indices, may be supplemented to the following extent:

Number of pages in tariff.	Supplement may contain (including title-page and index).
5 and not more than 16 pages.....	4 pages.
17 and not more than 32 pages....	6 pages.
33 or more pages.....	25 per centum of the number of pages in tariff.

¶ G. SUPPLEMENT EXCEEDING LIMIT SUBJECT TO REJECTION.

A supplement to a tariff which has the effect of exceeding the number of pages of supplemental matter to that tariff as indicated in the preceding paragraph which may be in effect at any time will be subject to rejection when offered for filing.¹⁶⁹

¶ H. AMENDMENTS TO LOOSE-LEAF TARIFFS: NO SUPPLEMENTS.

All changes in and additions to tariffs issued in loose-leaf form must be made by reprinting both pages of the leaf upon which change is made. Such pages must not be given supplement numbers, but must be designated "First revised page . . .," "Second revised page . . .," etc., must show the I. C. C.

¹⁶⁸ Rule 9, Tariff Circular 17-A.

¹⁶⁹ Ibid.

number of the tariff, the issued and effective dates, and the name, title, and address of officer by whom issued. Changes or additions must be noted by proper reference marks. When no change or addition is made in one of the pages reprinted it must bear notation, "No change in this page."¹⁷⁰

¶ I. SUPPLEMENTS TO PERIODICAL TARIFFS.

If a tariff provides that it will be reissued periodically at specified times, not more than six months apart, and the life of the tariff does not exceed six months, and such provision is strictly observed, supplements to such tariff may contain all amendments thereto between such specified dates for reissue, without limit as to size. Such tariff must bear on upper left-hand corner of title-page notation, "This tariff will be reissued effective on or before, 19..."¹⁷¹

¶ J. INDEX TO SUPPLEMENT.

A supplement of five or more pages must have an index of the matter which it contains, and a supplement of more than 23 pages must also contain a table of contents.¹⁷²

¶ K. SUPPLEMENT TO TARIFF THAT IS FILED AND NOT YET EFFECTIVE.

If a tariff is filed on statutory notice canceling another tariff, and after such filing and prior to the effective date of such new tariff a supplement to the tariff to be so canceled should be lawfully issued, rates in that supplement could not continue in effect for the thirty days required by the law, because the cancellation of the tariff also cancels supplements to it. In such a case supplements containing changes not included in the tariff that is to become effective may be issued as supplements both to the tariff in effect and to the tariff on file that will effect such cancellation, and be given both I. C. C. numbers. In other words, such issue must be a supplement to each of the tariffs, and copies must be filed accordingly. A supple-

¹⁷⁰ Rule 9, Tariff Circular 17-A.

¹⁷¹ Ibid.

¹⁷² Ibid.

ment issued under this rule containing reissued items shall note in connection with each of such items, in addition to the date effective as required by the rule, that the reissued items expire on the date at which the new tariff becomes effective, and that the new tariff will apply in lieu thereof; and such reissued items must not be brought forward in subsequent supplements to the new tariff. Such supplements may not contain any changes except those lawfully made by supplement to the tariff which is to be canceled by the tariff that has been filed and that is also so supplemented; and no other kind of supplement to a tariff that is on file and not yet effective may be made effective within thirty days from the effective date of the tariff without special permission.

The provisions of *Paragraph E, supra*, this section, as to the number of supplements to a tariff that may be in effect at any time, and the volume of supplemental matter they may contain, must be observed in connection with supplement issued under this paragraph.¹⁷³

¶ L. WITHDRAWAL AND ADOPTION OF TARIFFS WHEN ONE CARRIER IS ABSORBED BY ANOTHER CARRIER.

In case of change of ownership or control of a carrier, the carrier whose line is absorbed, taken over, or purchased by another carrier shall unite with that other carrier in common supplements to the tariffs on file with the Commission, on the one hand withdrawing and on the other hand accepting and establishing such tariffs and all effective supplements thereto. Such common supplements shall be executed jointly by the traffic officers of both the old and the new carriers, shall be numbered consecutively as supplements to the tariffs (*even if of less than five pages*) to which they are directed, and may be made effective on five days' notice to the public and the Commission by noting thereon reference to this rule. Amendments to such tariffs must thereafter be filed in consecutively numbered supplements thereto until the tariffs are reissued. New

¹⁷³ Rule 9, Tariff Circular 17-A.

tariffs reissuing or superseding these shall be numbered in the I. C. C. series of the new carrier.¹⁷⁴

¶ M. WITHDRAWAL AND ADOPTION OF TARIFFS WHEN A ROAD OR PORTION THEREOF IS TRANSFERRED TO ANOTHER COMPANY, OR ITS NAME IS CHANGED.

When a road or a part of a road is transferred from the operating control of one company to that of another, or when its name is changed, the existing tariffs issued by the company that surrenders control must be withdrawn by it and adopted by the company assuming control, as provided in the preceding paragraph.¹⁷⁵

¶ N. ADOPTION OF TARIFFS ISSUED BY OTHER CARRIERS OR JOINT AGENTS, AND OF CONCURRENCES, POWER OF ATTORNEY, ETC., FILED BY OLD CARRIER.

As to tariffs issued by other carriers or joint agents under concurrences or powers of attorney granted by the old carrier or company, the new carrier or company shall, if it intends to use such tariff publications and rates, issue, file, and post, with I. C. C. numbers, an adoption notice, substantially as follows:¹⁷⁶

The [*name of carrier*] hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatever, filed with the Interstate Commerce Commission by the [*name of old carrier*] prior to [*date*] the beginning of its possession. By this tariff it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which it has heretofore filed with said Commission.

This notice may be made effective and be filed on immediate notice.¹⁷⁷

¶ O. ADOPTION NOTICE FILED BY RECEIVER.

Similar adoption notice as shown in the preceding paragraph must be filed by a receiver when assuming possession and control of a carrier's lines.¹⁷⁸

¹⁷⁴ Rule 9, Tariff Circular 17-A.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Rule 9, Tariff Circular 17-A.

¶ P. CONCURRENCES AND POWERS OF ATTORNEY OF OLD CARRIER MUST BE REPLACED BY THOSE OF NEW CARRIER.

Concurrences and powers of attorney adopted as above by a carrier must, as soon as possible, be replaced and superseded by new concurrences and powers of attorney issued by and in the name of the new carrier or company, and in each instance canceling the concurrence or power of attorney superseded. The carrier surrendering control of the property has no lawful right to abandon its tariffs except on lawful notice, and when it surrenders control of the property it surrenders all right to publish rates or fares applicable thereto except under proper authority from the carrier or company to whose control the property passes. The public has a right to available and lawfully applicable rates and fares over that property.¹⁷⁹

§ 474. **Effective Dates of Tariffs, Classifications, and Exception Sheets and Supplements thereto.**

¶ A. A TARIFF THAT FAILS TO STATE THE DATE OF ITS EFFECTIVENESS IS UNLAWFUL.

The Act to Regulate Commerce (*as amended June 18, 1910*) gives the Commission authority to reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and provides that any schedule so rejected by the Commission shall be void and its use shall be unlawful.^{180a}

A tariff was filed without naming a date on which it was to take effect. Does it ever become effective, and if so, when? *Held*, That the tariff was unlawful and has never taken effect.¹⁸⁰

¶ B. EFFECTIVE DATE OF TARIFF THAT WAS USED BEFORE AUGUST 28, 1906, BUT WAS NOT FILED UNTIL AFTER THAT DATE.

Prior to the effective date of the amended Act some carriers used the car-service rules of car-service associations under which to assess demurrage and other terminal charges, but did not file those rules with the Commission until after the amended

¹⁷⁹ Rule 9, Tariff Circular 17-A.

¹⁸⁰ Rule 12, Con. Rul. Bul. No. 4 (Dec. 2, 1907).

^{180a} Section 6, Act (as amended June 18, 1910).

Act became effective. Such publications bore effective dates antedating their filing, but indicated no specific date subsequent to the date of filing upon which the schedule should become effective. The question raised as to whether such publications so filed became effective on the date of filing or thirty days subsequent thereto: *Held*, That prior to August 28, 1906, as well as subsequent to that date, the law required carriers amenable to its provisions to file with the Commission and post to the public schedules containing their terminal charges "and any rules or regulations which in any wise change, affect, or determine any part or the aggregate" of their rates, fares, and charges. The amended Act prohibits carriers from engaging or participating in the transportation of passengers or property, as defined by the Act, unless the rates, fares, and charges upon which the same are transported have been filed and published in accordance with the provisions of the Act.

The Commission has decided that, excepting the first tariff under which a carrier engages in interstate transportation, a tariff that is filed without naming date on which it is to take effect is unlawful and never becomes effective; it decided under the above consideration that publications that were used prior to the effective date of the amended Act, that were filed subsequent to that date and which bore effective dates antedating the date of filing thereof, became effective thirty days subsequent to the date of the filing of the same.¹⁸¹

¶ C. TARIFFS TAKING EFFECT ON SUNDAY.

Under a tariff schedule regularly filed, showing a change in published rates, it happened that the thirty days' notice required by law expired on Sunday. *Held*, That the tariff is lawful.¹⁸²

¶ D. EFFECTIVE DATE OF TARIFF WHICH BORE NO EFFECTIVE DATE WHICH WAS FILED BY A CARRIER WHEN FIRST COMING UNDER THE LAW.

A carrier, under its arrangement for the first time to participate in interstate transportation, failed to note an effective

¹⁸¹ Rule 100, Con. Rul. Bul. No. 4 (Oct. 12, 1908).

¹⁸² Rule 47, Con. Rul. Bul. No. 4 (March 9, 1908).

date on its tariff schedule. *Held*, That being that carrier's first tariff subject to the Act, it became effective as soon as filed.¹⁸³

§ 475. Cancellation of Tariffs or Parts thereof.

¶ A. GENERAL PRINCIPLES.

A rate once lawfully published continues to be the lawful rate until it has been lawfully canceled. A subsequent tariff naming other rates without canceling the previous rates cannot carry the new rates into lawful effect. The silence of a subsequent tariff with respect to rates lawfully in effect cannot be accepted as a lawful cancellation of the previous rates. Nor will vague reference in subsequent tariffs as to the cancellation of previous tariffs have that effect. The law and the requirements of the Commission as set forth in the following paragraphs provide a method by which existing rates may be canceled and other rates may be put in effect and these requirements must be fulfilled in order to give legal effect to a new rate intended to take the place of an existing rate.¹⁸⁴

¶ B. TARIFF OR SUPPLEMENTS TO TARIFF SHALL SPECIFY CANCELLATIONS.

If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portion of such other tariff which is thereby canceled, and such other tariff shall at the same time be correspondingly amended, effective on the same date, in the regular way; that is, by reissue, if tariff is of less than five pages, and by reissue or supplement, if tariff is of more than five pages. Such reissue or supplement must state where rates will thereafter be found and must be filed at the same time and in connection with the tariff which contains the new rates. It will not be necessary to give on commodity tariff or supplement reference to first-class tariffs that may be af-

¹⁸³ Rule 73, Con. Rul. Bul. No. 4 (May 5, 1908).

¹⁸⁴ *New Albany Box & Basket Co. v. Illinois Cent. Rd. Co.*, 16 I. C. C. R. 315.

fect, nor to give on first-class tariffs or supplements reference to commodity tariffs, except as otherwise provided in specific rules.¹⁸⁵

¶ C. CANCELLATION MUST BE BY AUTHORIZED AGENT OR BY CARRIER THAT ISSUED THE TARIFF CANCELED.

An agent who acts under power of attorney is fully authorized to act for the carriers that have named him their agent and attorney, and, therefore, it is permissible for him to cancel by his tariffs issues of such principals.

A carrier may not by its individual tariff cancel, amend, or modify a tariff filed by a duly authorized agent, except when corresponding amendment to such agent's tariff is filed at the same time and as per *Paragraph B, supra*, this section.¹⁸⁶

¶ D. CONCURRENCE DOES NOT CONFER AUTHORITY TO CANCEL.

A concurrence does not confer authority upon either carrier or agent to cancel tariffs of concurring carrier, and, therefore, tariffs issued under concurrences may not assume to cancel, or carry notation of cancellation of, tariffs of and issued by concurring carriers. Such cancellations must be made by the carrier that issued the tariff that is to be canceled.¹⁸⁷

¶ E. CANCELLATION NOTICE MUST BE BY SUPPLEMENT.

If a tariff is canceled with the purpose of canceling entirely the rates named therein, or when, through error or omission, a later issue failed to cancel the previous issue and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels, even though it be a tariff of four pages or less, and even though the tariff may at the time have the full number of supplements permitted by the section relating to Amendments and Supplements.¹⁸⁸

¹⁸⁵ Rule 8, Tariff Circular 17-A.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¶ F. CANCELLATION NOTICE SHALL SPECIFY WHERE RATES
WILL THEREAFTER BE FOUND.

When a commodity rate is canceled, the cancellation notice must show where the rates or rate will thereafter be found or what rates or rate will thereafter apply. For example: "Rate in, I. C. C. No., will apply," or "Class rates will apply," or "Combination rate will apply," or "No rates in effect."

If a tariff is canceled with the purpose of applying in lieu thereof the rates shown in some other tariff, the cancellation notice shall make specific reference to the I. C. C. number of the tariff in which such rates will thereafter be found. Cancellation of a tariff also cancels the supplement to such tariff, if any in effect.¹⁸⁹ If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice in new tariff, as provided elsewhere.¹⁹⁰

¶ G. WHEN JOINT AGENT PUBLISHES A NEW RATE BETWEEN
TWO POINTS, WITHOUT CANCELING THE OLD RATE DULY
PUBLISHED BY ONE OF THE CARRIERS, THE OLD RATE
ON THAT LINE REMAINS IN EFFECT.

The published tariffs of an interstate carrier named a rate of 20 cents on a given commodity between specified points. On October 1, 1907, under a proper power of attorney, a joint agent of all carriers serving those two points published a rate of 22 cents. He failed to cancel the 20-cent rate and it was not formally canceled by the carrier that published it until January 14, 1908. *Held*, That because of the failure of the joint agent and of the carrier that published it to cancel the rate in the manner required by the Act and the rule of the Commission, the 20-cent rate remained the lawful rate of that carrier until formally canceled on January 14, 1908.¹⁹¹

A carrier's tariff effective January 1, 1903, named certain rates between two points. By a joint tariff, effective February

¹⁸⁹ Rule 8, Tariff Circular 17-A.

¹⁹⁰ *Ibid*.

¹⁹¹ Rule 50, Con. Rul. Bul. No. 4 (Jan. 14, 1908).

1, 1908, higher rates were named between the same points, but without reference to the previous tariffs or cancellation of the lower rates therein. On March 26, 1908, a supplement was filed naming the same higher rates and canceling the rates named in the tariff of January 1, 1903. *Held*, That until March 26, 1908, when the original rates were canceled, they remained in effect and were the lawful rates.¹⁹²

¶ H. CANCELLATION OF A TARIFF DOES NOT IMPAIR RIGHTS OF SHIPPER WHICH ACCRUED UNDER SUCH TARIFF PRIOR TO ITS CANCELLATION.

A schedule of rates extended by a carrier to the shipping public may be canceled upon thirty days' notice in conformity with the law. But such cancellation is not to be construed as a withdrawal of all rights arising under such tariff to those who have availed themselves of its provisions prior to the date that such tariff dies. If this were not so, a shipper could never know whether rights or privileges extended by carriers in their lawful tariffs would be available for the period fixed therein. It would be manifestly within a carrier's power to withdraw, by cancellation, at any time such rights as the tariffs offered at the time of shipment, thus leaving the shipper at the mercy of the carrier until the ultimate arrival of his freight at destination. This is a view of the law which would be utterly impracticable and vicious in its effects. The shipper must know at the time of tender of shipment from the tariffs themselves what rate he must pay and what rights thereunder he may secure. If there is offered to him under the tariff a right of stopping in transit, reconsignment, storage or return of freight, he is entitled to use such privilege, even though it may be later canceled out of the tariff before the time allowed for the exercise of such right has expired. The date of original shipment determines the rights, privileges, and obligations attaching to that shipment throughout its transportation; and this must be determined by the tariff in force upon that date.¹⁹³

¹⁹² Rule 70, Con. Rul. Bul. No. 4 (May 5, 1908).

¹⁹³ Interstate Remedy Co. v. American Express Co., 16 I. C. C. R.

§ 476. Joint Tariffs Issued by Joint Agents.

¶ A. RIGHT OF JOINT AGENT TO ISSUE JOINT TARIFFS AND FOR WHOM HE ACTS.

It will be permissible for an agent and attorney for certain lines to join with another agent and attorney for lines in another territory in the issuance of tariffs, naming joint through rates from points in one territory to points in the other, or "between" points in the territories represented by such agents. In doing this each of such agents acts for the lines that have given him power of attorney FX1¹⁹⁴ and for the lines that have given proper concurrences to the carriers that have given him such power of attorney; and for such lines only.¹⁹⁵

¶ B. I. C. C. NUMBERS AND FILING.

The publication issued as in the preceding paragraph will bear I. C. C. numbers, under the serial of each of the agents, and each of the agents will file the publication and each and every supplement thereto for and on behalf of the roads for which he is attorney and agent and those that are participants under concurrences to the roads for which he is agent and attorney, just as if it were his individual publication on behalf of those carriers alone. Each of such agents will be held to strict conformity to the law and the tariff regulations regarding the construction of the tariff and notices of changes therein, and in filing the tariff and each and every applicant thereto.¹⁹⁶

¶ C. EACH AGENT ACTS ONLY FOR CARRIERS FOR WHICH HE HAS AUTHORITY.

Under the above arrangement each agent acts only for the carriers that he has due authority to act for.¹⁹⁷

¹⁹⁴ FX1, FX2, etc., refer to the forms of concurrences and powers of attorney to be filed with the Commission as treated of at length in this chapter.

¹⁹⁵ Rule 17, Tariff Circular 17-A.

¹⁹⁶ Ibid.

¹⁹⁷ Ibid.

¶ D. PRINCIPALS OF EACH AGENT BOUND BY HIS ACTS, AND
CROSS EXCHANGE OF CONCURRENCES NOT REQUIRED.

The principals of each are bound by the acts of their attorney and agent, and as each will file the tariff under his own I. C. C. number and for the roads which he lawfully represents, the cross exchange of concurrences between all of the different roads represented on the one hand by one agent and on the other hand by the other agent will not be necessary as to that tariff.¹⁹⁸

¶ E. LISTS OF PARTICIPATING CARRIERS.

Such publication will show lists of participating carriers in the following manner: First, a list of the carriers from which one of the agents has power of attorney FX1, showing as to each the FX1 number of such authority. Second, a list of the carriers that participate under concurrences to the lines for which that agent is agent and attorney, showing the form and number of each concurrence. Third, a list of the carriers for which the other agent is agent and attorney, with the FX1 number of his authority as to each. Fourth, a list of the carriers that participate under concurrences to the lines for which that agent is agent and attorney, showing the form and number of each concurrence.¹⁹⁹

Each of these four subdivisions of the participating carriers will be indicated by plain headlines, as, for instance, "Lines for which is agent and attorney," "Participating lines under concurrences to carriers for which is agent and attorney," and like notices for the other agents' lists of principals and concurring lines.

In order to avoid confusion and complications under this plan, it is essential that the agents adopting it shall perfect their understandings and that there shall be no omission or neglect on part of either about filing under lawful notice any tariff so issued or any supplement thereto.²⁰⁰

¹⁹⁸ Rule 17, Tariff Circular 17-A.

¹⁹⁹ Ibid.

²⁰⁰ Ibid.

§ 477. Agents authorized to issue and file Tariffs, Classifications and Exception Sheets and Supplements thereto.

¶ A. NOTICE OF AUTHORIZATION AND ACCEPTANCE MUST BE FILED.

If a carrier authorizes an agent to file its tariffs or classifications and exception sheets and supplements thereto, or certain of them, official notice of such authorization and of acceptance of responsibility by the carrier for his acts, in form as hereinafter specified, must be filed with the Commission.²⁰¹

¶ B. FORM OF APPOINTMENT OF AGENT TO FILE TARIFFS, CLASSIFICATIONS, AND EXCEPTION SHEETS AND SUPPLEMENTS THERETO.

The following form, on page 8 by 10½ inches in size, will be used in giving authority to an agent to file for the carrier tariffs, classifications and exception sheets, and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.²⁰²

This form may be modified so as to confer the authority desired by omitting the words “(1) for it alone,” or by omitting the words “and (2) for it jointly with other carriers.”²⁰³

In giving power of attorney to an agent for the purpose of issuing classification this form may be modified by striking out the word “tariffs,” and if desired the words “and exception sheets.”²⁰⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Freight Department,

[*Dated*] ,

Form FX1—No. . . .

Know all men by these presents:

That the [*name of carrier*] has made, constituted, and appointed, and by these presents does make, constitute, and appoint [*name of person appointed*] its true and lawful attorney and agent for the said

²⁰¹ See note 11, *supra*.

²⁰² Rule 18, Tariff Circular 17-A.

²⁰³ *Ibid*.

²⁰⁴ Rule 16, Tariff Circular 17-A.

company and in its name, place, and stead, (1) for it alone, and (2) for it jointly with other carriers, to file tariffs, classifications, and exception sheets and supplements thereto, as required of common carriers by the Act to Regulate Commerce and by regulations established by the Interstate Commerce Commission thereunder for the period of time the traffic and the territory now herein named:

.....
 And the said [*name of carrier*] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its president and to be duly attested under its corporate seal by its secretary, at, in the State of, on this day of, in the year of our Lord nineteen hundred and

The [*name of carrier*],
 By
 Its President.

Attest:

.....,
 Secretary.

[*Corporate Seal.*]

*Original Form to be Filed with Commission and Duplicates
 Furnished Agent.*

Carrier using this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given. Separate authorizations will be given for freight and passenger tariffs.

¶ C. CROSS EXCHANGE OF CONCURRENCES AVOIDED.

If two or more carriers execute the above form containing the words "for it jointly with other carriers" in favor of a joint agent it will not be necessary for those carriers to exchange concurrences *with each other* as to the joint tariffs issued by that joint agent under that authority.²⁰⁵

¶ D. AUTHORITY TO AGENT MAY BE REVOKED OR TRANSFERRED.

Authority given as above stated may be revoked by a carrier upon thirty days' official notice to the Commission, or at any time be transferred to another agent by filing with the

²⁰⁵ See note 202, *supra*.

Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.²⁰⁶

¶ E. AUTHORIZATIONS FOR AGENT AND CONCURRENCES IN HIS
TARIFFS MUST BE FILED.

If two or more carriers appoint the same person as agent for the filing of tariffs or classifications and supplements thereto, each of them will be required to file with the Commission power of attorney in form prescribed appointing him their agent; and the concurrence of every other carrier participating in any tariff or classification or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.²⁰⁷

¶ F. JOINT AGENT WILL USE HIS OWN I. C. C. SERIAL NUMBER.

Such joint agent duly authorized to act for several carriers must file joint tariffs or classifications or exception sheets under I. C. C. serial numbers of his own.²⁰⁸

¶ G. TARIFFS ISSUED BY A CARRIER UNDER CONCURRENCES WILL
BE FILED BY IT FOR ALL CONCURRING.

Tariffs issued by a carrier under its I. C. C. numbers may include, under proper concurrences, shown therein, rates via, and to and from points on other carriers' lines and concurring carriers may use such tariffs for posting at their stations. Such tariff must be filed by the issuing carrier and such filing will constitute filing for all lawfully concurring carriers.²⁰⁹

¶ H. SEND COPIES OF JOINT PUBLICATION TO EVERY PARTICIPANT THEREIN.

The agent or the carrier that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.²¹⁰

²⁰⁶ See note 11, *supra*.

²⁰⁷ *Ibid*.

²⁰⁸ *Ibid*.

²⁰⁹ *Ibid*.

²¹⁰ *Ibid*.

¶ I. CARRIER MUST NOT PUBLISH RATES CONFLICTING WITH
OR DUPLICATING RATES PUBLISHED BY ITS AGENT.

A carrier that grants authority to an agent or to another carrier to publish and file certain of its rates must not in its own publications publish rates that duplicate or conflict with those which are published by such authorized agent or other carrier.²¹¹

¶ J. WHEN AGENT FILES CLASS, BUT NOT COMMODITY RATES.

If an agent publishes class rates and does not also publish commodity rates, such agent's class tariff must carry notation that the commodity rates of the carriers parties to the tariff are to be found in their individual issues, and that where so found they take precedence over class rates.²¹²

¶ K. WHEN AGENT PUBLISHES PART BUT NOT ALL COMMODITY
RATES.

If an agent publishes a part but not all of the commodity rates of the carriers for which he acts, all of his tariffs containing commodity rates must bear notation that commodity rates not shown therein are to be found in the carriers' individual issues, and where so found they take precedence over class rates.²¹³

¶ L. CARRIER MAY GRANT AUTHORITY TO JOINT AGENT TO
PUBLISH AND FILE ITS CLASSIFICATION, EXCEPTION
SHEETS AND SUPPLEMENTS THERETO.

A carrier may grant to a joint agent authority to publish and file for it classification and supplements thereto and exceptions to the classification; or, such exceptions may be published by the carrier in its own issues, either as parts of individual tariffs or in a publication that is given an I. C. C. number, that is filed and posted and required, and that is devoted to such exceptions. Such exceptions and changes there-

²¹¹ See note 11, *supra*.

²¹² *Ibid*.

²¹³ *Ibid*.

in may be made only on statutory notice or under special permission for a shorter time.²¹⁴

In so far as reasonably practicable exceptions should be included in the tariff which they affect.²¹⁵

¶ M. I. C. C. NUMBERS OF CLASSIFICATIONS ISSUED BY JOINT AGENT.

A joint agent to whom carriers have extended authority under power of attorney to publish and file classifications and supplements thereto must issue them under his own I. C. C. numbers.²¹⁶

¶ N. LIST OF PARTICIPATING CARRIERS.

A joint agent to whom carriers have extended authority under power of attorney to publish and file classifications and supplements thereto must show in the classification a list of the carriers under which he acts under power of attorney, giving as to each the FX1 number of such authority.²¹⁷

¶ O. FILING OF CLASSIFICATIONS ISSUED BY JOINT AGENT.

A joint agent issuing a classification for carriers under power of attorney as stated in *Paragraph A, supra*, must file the classification and supplements thereto on behalf of all the carriers that so authorized him to act for them; and such carriers will not file the classification or supplements thereto for themselves. The provisions of the law as to statutory notice must be observed in the issuance of supplements or reissue of the classification.²¹⁸

¶ P. IF CARRIER DOES NOT AUTHORIZE AGENT TO FILE CLASSIFICATION, CARRIER IS BOUND TO STATUTORY NOTICE.

If a carrier fails to authorize an agent to file the classification for it and undertakes to file it for itself, it is bound by the terms of the law as to notice of change and date of filing, both as to the classification and supplement thereto.²¹⁹

²¹⁴ See note 204, *supra*.

²¹⁵ *Ibid*.

²¹⁶ *Ibid*.

²¹⁷ *Ibid*.

²¹⁸ *Ibid*.

²¹⁹ *Ibid*.

§ 478. Concurrence by Carriers in Tariffs issued and filed by another Carrier or its Agent.

¶ A. MANDATE OF THE STATUTE REGARDING CONCURRENCE IN JOINT TARIFFS.

The Act provides that each of the parties to a joint tariff, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.²²⁰

¶ B. CONCURRENCE BETTER THAN POWER OF ATTORNEY.

The Commission has ruled that experience has demonstrated that it is simpler and better to use concurrence than power of attorney in giving authority to a carrier to publish and file another carrier's rates. Provision for giving power of attorney to another carrier, has, therefore, been eliminated except for the purpose of granting authority to give and receive concurrences as provided elsewhere.²²¹

¶ C. CONCURRENCE MUST BE GIVEN TO CARRIERS NAMED THEREIN.

Concurrences must be given to carriers named therein and authority so granted to a carrier may be by it delegated to its lawfully appointed agent.²²²

¶ D. SIZE OF PAPER.

All concurrences must be on paper 8 by 10½ inches in size.²²³

¶ E. SEPARATE CONCURRENCES FOR FREIGHT AND PASSENGER TARIFFS.

Separate concurrences will be given by carriers for freight and passenger tariffs.²²⁴

²²⁰ See note 1, *supra*.

²²¹ Note to Rule 18, Tariff Circular 17-A.

²²² See note 202, *supra*.

²²³ *Ibid*.

²²⁴ *Ibid*.

¶ F. FORM OF CONCURRENCE IN A TARIFF THAT IS ISSUED AND FILED BY ANOTHER CARRIER OR ITS AGENT AND TO WHICH THE CARRIER GIVING CONCURRENCE IS A PARTY.

The following form will be used in giving concurrence in a tariff that is issued and filed by another carrier or its agent and to which the carrier giving the concurrence is a part.²²⁵ If given to continue until revoked, it will serve as a continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken out, a new concurrence will be required with each supplement or reissue.²²⁶

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Freight Department,

[*Date*],

Form FX2—No.

To the Interstate Commerce Commission,

Washington D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of the rate schedule described below, together with supplements thereto and reissues thereof which the named issuing carrier or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

Title and number: [*Here give exact description of title of schedule, including number and name of series.*]

Date of issue.....

Date effective.....

Issued by { [*Official.*]
 { [*Company.*]

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Concurrences Accompanying Tariff.

The original of this form will be filed with the Commission by the carrier or agent who files the tariff and will accompany the tariff.²²⁷

²²⁵ Rule 19, Tariff Circular 17-A.

²²⁶ Ibid.

²²⁷ Ibid.

¶ G. FORM OF CONCURRENCE GIVEN BY CARRIER TO EMBRACE ALL TARIFFS ISSUED BY ANOTHER CARRIER OR ITS AGENT IN WHICH CONCURRING CARRIER IS SHOWN AS A PARTICIPATING INTERMEDIATE OR TERMINAL LINE.

Concurrences may be given by any carrier to embrace all tariffs issued by another carrier or its agent in which the concurring carrier is shown as a participating intermediate line or terminal after the following form:²²⁸

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Freight Department,

[Date],

Form FX3—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [name of carrier] or its agent may make and file, in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with Commission and Duplicate
Furnished Carrier.*

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.²²⁹

²²⁸ Rule 20, Tariff Circular 17-A.

²²⁹ Ibid.

¶ H. FORM OF CONCURRENCE GIVEN BY A CARRIER IN TARIFFS
ISSUED BY ANOTHER CARRIER OR ITS AGENT APPLYING
RATES TO OR FROM ITS POINTS OR VIA ITS LINES, ON
CERTAIN DESCRIBED TRAFFIC OR BETWEEN CERTAIN DE-
SCRIBED POINTS OR TERRITORIES.

Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying rates to or from its points or via its lines, on certain described traffic or between certain described points or territories, after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to publish and file rates to and from and via its lines, and not otherwise qualified, carrier will use concurrence form FX5 or FX7.

If a carrier has given another carrier concurrence FX4, under which it concurs in the classification which that other carrier or its agent may make and file the carrier to which that concurrence is given may exercise the authority by its lawfully appointed agents and the carrier which gave the authority be shown in the publication as participant under the form and number of its concurrence.²³⁰

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Freight Department,

[Date],

Form FX4—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [name of carrier] or its agent may make and file and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon; or between and; or from to; or via; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

²³⁰ See note 204, supra.

*Original Form to be Filed with Commission and Duplicate
Furnished Carrier.*

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given.²³¹

¶ I. FORM OF CONCURRENCE BY A CARRIER IN TARIFFS ISSUED
BY ANOTHER CARRIER OR ITS AGENT APPLYING RATES TO
AND FROM ITS POINTS AND VIA ITS LINES.

Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying rates *to and from* its points and via its lines and after the following form:²³²

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Freight Department,

[Date],

Form FX5—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [name of carrier] or its agent may make and file, and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying to and from stations on its lines, and via its lines, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with Commission and Duplicate
Furnished Carrier.*

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under

²³¹ Rule 21, Tariff Circular 17-A.

²³² Rule 22, Tariff Circular 17-A.

the concurrence covering traffic provided for in tariffs issued by such agents.²³³

¶ J. FORM OF CONCURRENCE GIVEN BY TWO OR MORE CARRIERS
IN TARIFFS ISSUED BY THEIR JOINT AGENT.

If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements there-to under powers of attorney form FX1, concurrence in tariffs issued by him under such authority may be in either the following forms:²³⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Freight Department,

[Date] ,

Form FX6—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Filing.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.²³⁵

²³³ Rule 22, Tariff Circular 17-A.

²³⁴ Rules 23 and 24, Tariff Circular 17-A.

²³⁵ Ibid.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Freight Department,

[Date] ,

Form FX7—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Filing.

Carrier issuing these forms will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.²³⁶

¶ K. FORM OF CONCURRENCE GIVEN BY TWO OR MORE CARRIERS IN TARIFFS ISSUED BY THEIR JOINT AGENT, APPLYING TO OR FROM CERTAIN POINTS OR TERRITORY.

If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form FX1, concurrence in tariffs issued by him under such authority applying to or from certain points or territory may be issued in the following form, modified as may be necessary to confer exactly the authority intended to be granted:²³⁷

²³⁶ Rules 23 and 24, Tariff Circular 17-A.

²³⁷ Rule 25, Tariff Circular 17-A.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Freight Department,

[*Date*] ,

Form FX8—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of any freight-rate schedule or supplement thereto which the [*here give list of all roads for which the agent has powers of attorney*], or either or any of them, may make and file through their agent and attorney [*name of agent*], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon ; or between and ; or from to ; or from to points on or reached via its line; or from points on or via its line to until this authority is revoked by formal and official notice of revocation placed in the hands of the Interstate Commerce Commission and of the carriers to which this concurrence is given, or of their agent and attorney herein named.

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Filing.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicate to each and every carrier represented by him.²³⁸

NOTE.—Concurrence, form FX2, applies to individual publication named therein. Concurrence, form FX3 or FX6, confers authority to publish and file rates to, but not from, points on line of concurring carrier, and via its lines. Concurrence, form FX5 or FX7, confers authority to publish and file rates to and from points on line of concurring carrier, and via its lines. Forms FX3, FX5, FX6, and FX7 are not to be modified except as specified in the Rules. The use of these several forms as provided will, therefore, show by the form number just what authority has been given, except when form FX4 or FX8 is used, these forms being provided for instances which the other forms do not exactly fit. The Commission does not require the substitution of concurrence form FX5 for form FX4, now on file, which covers the authority provided for in the new form FX5, but will welcome such substitution. For all new concurrences forms will be issued as specified in the several Rules, and FX4 or FX8 only when neither of the other forms provides for the authority it is desired to confer.

²³⁸ Rule 25, Tariff Circular 17-A.

¶ L. NUMBER OF CONCURRENCES AND AUTHORIZATIONS.

Each carrier will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from the I. C. C. numbers of tariffs.²³⁹

¶ M. REVOCATION EFFECTIVE.

A concurrence may be revoked by filing notice of such revocation with the Commission and serving same upon the carrier to which such concurrence was given. Such notice must specify the date upon which revocation is to be made effective, and must give at least sixty days' notice to the Commission and to the carrier to which concurrence was given. Corresponding revision of tariff or tariffs shall be made in the next supplement to or reissue thereof, and if necessary, supplement or reissue shall be made for the sole purpose of making such change lawfully effective or statutory notice upon the effective date stated in the notice of revocation.²⁴⁰

¶ N. SUBSIDIARY OR SMALL-LINE TARIFFS.

Subsidiary or small lines which do not wish to issue concurrences or tariffs may give to the parent or other line power of attorney to concur in tariffs, and also general concurrence FX4 or FX5, to file tariffs, and the carrier holding such authority and concurrence may give, and also receive, concurrences for itself and the lines for which it acts in one instrument. Such subsidiary or small lines must, however, be named in concurrences so given. In giving power of attorney to concur in tariffs, form FX1 will be modified by striking out from line six the word "file" and substituting the following therefor: "to give and receive concurrences in."²⁴¹

¶ O. CONFLICTING AUTHORITY TO BE AVOIDED.

In giving concurrences care must be taken to avoid proba-

²³⁹ Rule 26, Tariff Circular 17-A.

²⁴⁰ Ibid.

²⁴¹ Ibid.

bility of two or more agents or carriers naming conflicting rates or rules.²⁴²

¶ P. CARRIER ISSUING AUTHORITY OR CONCURRENCE IS NOT RELIEVED FROM DUTY OF POSTING TARIFFS.

The granting of authority to issue tariffs under power of attorney, or concurrence, does not relieve the carrier conferring the authority from the necessity of complying with the law with regard to posting tariffs. It is proper to use tariffs issued under its authority for that purpose.²⁴³

¶ Q. USE OF CONSOLIDATED CONCURRENCES.

When consolidated form of concurrences FX6, FX7, or FX8, has been used and additions are to be made to the list of roads for which such agent acts under powers of attorney the necessity for a new set of consolidated concurrences presents itself. The Commission has suggested that trouble and inconvenience can be avoided by the issuance of powers of attorney authorizing such agent to receive concurrences provided in *Paragraphs J and K, supra*, this section, and the securing of new concurrences will be comparatively simple.²⁴⁴

¶ R. TARIFFS NOT CONCURRED IN ARE UNLAWFUL.

A properly accredited chairman of a tariff committee published tariffs for certain carriers for which he was the duly constituted attorney-in-fact for the purpose. A carrier declining to concur in his tariffs put a new cover on them and filed them as its own tariffs without securing the concurrence of the other carriers named therein. *Held*, That the tariffs so adopted were unlawful and could not be used by the carrier.²⁴⁵

¶ S. CONCURRENCE IN TARIFFS OF CARRIERS IN ADJACENT FOREIGN COUNTRIES.

The Commission has held that, "Through rates and fares from points in the United States to points in foreign countries

²⁴² Rule 26, Tariff Circular 17-A.

²⁴³ *Ibid*.

²⁴⁴ See note 11, *supra*.

²⁴⁵ Rule 13, Con. Rul. Bul. No. 4 (Dec. 2, 1907).

adjacent thereto and through rates and fares from points in adjacent foreign countries to points in the United States are a great convenience, and the Commission therefore desires to permit and encourage the publication and filing of such through rates and fares under lawful and proper conditions. Therefore, and until further order of the Commission:²⁴⁶

“A joint tariff naming rates or fares from a point in the United States to a point in Mexico or in Canada; from a point in Mexico or in Canada to a point in the United States; from a point in Mexico through the United States to a point in Canada; from a point in Canada through the United States to a point in Mexico; from a point in Mexico through the United States to a point in Mexico; from a point in Canada through the United States to a point in Canada; from a point in the United States through Mexico or through Canada to a point in the United States, must be concurred in, in form prescribed in these regulations and without reservation by all lines that are parties to the through rates or fares and that participate in transportation thereunder; or, a statement of the divisions of the rates or fares accruing to the roads in the United States to or from the border must be incorporated in the tariff or be filed with the Commission together with and at the same time the tariff itself is filed.”²⁴⁷

§ 479. Letter of Transmittal accompanying Tariffs filed with the Commission.

All tariffs that are filed with the Commission will be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size and to the following effect:²⁴⁸

[Name of carrier in full.]

General Freight Department,

[Date] ,

Advice No.

To the Interstate Commerce Commission,

Washington, D. C.:

Accompanying schedule is sent you for filing, in compliance with

²⁴⁶ Rule 72, Tariff Circular 17-A as amended by Supplement No. 1 thereto.

²⁴⁷ Ibid.

²⁴⁸ Rule 27, Tariff Circular 17-A.

REGULATION—48.

the requirements of the Act to Regulate Commerce, issued by and bearing

I. C. C. No. ...

Supp. No. ..., to I. C. C. No. ..

Effective, 19...;

and is concurred in by all carriers named therein as participants, under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named carriers, whose concurrences are attached hereto:

.....
.....
.....

[Signature of filing agent.]

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can conveniently be entered.²⁴⁹

NOTE.—If receipt for accompanying schedule is desired the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.²⁵⁰

§ 480. Basing or Proportional Tariffs must be Specific.

Tariffs containing basing or proportional rates must specify clearly the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing rates must show the I. C. C. numbers of the tariffs in which bases may be found.²⁵¹

§ 481. Distance Tariffs.

¶ A. DISTANCE TARIFF MAY BE USED WHEN NO OTHER RATES ARE PROVIDED.

It is permissible for a carrier, or for two or more carriers, to issue a distance tariff for use in determining rates on its, or their own lines, but only in cases where no other rates are provided.²⁵²

¶ B. NOTATION ON DISTANCE TARIFFS.

Tariffs issued in accordance with the preceding paragraph must bear on their title page the following notation:

²⁴⁹ Rule 27, Tariff Circular 17-A.

²⁵⁰ Ibid.

²⁵¹ Rule 5, Tariff Circular 17-A.

²⁵² See note 62, *supra*.

Rates shown herein may be used only when no other rates apply. When governed by classification which also contains distance rates they will take precedence over the distance rates in such classification. They may not be used either by themselves or in combination in preference to any specific tariff rates.²⁵³

¶ C. DISTANCE TARIFF MAY BE INCLUDED IN TARIFF OF
SPECIFIC RATES.

A distance tariff may be included in a tariff of specific rates together with the following rule:

If the use of the distance tariff on page of this tariff makes a lower charge on any shipment than the specific rate shown in this tariff such lower charge will apply.²⁵⁴

¶ D. OFFICIAL LIST OF POINTS AND DISTANCES.

Every carrier that uses a distance tariff, which is or may be used in connection with rates on interstate shipments, must incorporate therein an official list of all the points, in connection with which the tariff may apply, showing in proper arrangement the distance between them; or must give therein reference by I. C. C. number to the issue that contains such list.²⁵⁵

A carrier may show in a tariff publication under I. C. C. number an official list of its points and may show therein distances, prepay points, billing instructions to points not on the line of such road, etc. If such publication contains no rates and no rules or regulations that affect the charges on any shipments, amendments to it may be issued on one day's notice to the public and to the Commission. Such supplement so issued must bear on title page notation: "Issued under authority of Rule 10, Tariff Circular 17-A." If, however, such publication contains any rate or any rule or regulation that can affect a charge upon any shipment, no change in the publication may be made except upon statutory notice or on special permission for shorter time. No supplement to such publication, whether issued under authority of this rule or on statutory notice, or under special permission, may con-

²⁵³ Rule 27, Tariff Circular 17-A.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

tain notice of any change effective prior to the effective date of the supplement.²⁵⁶

Rates to or from new points on old lines of road may not be established, nor rates to or from old points be withdrawn, except upon statutory notice or under special permission.²⁵⁷

§ 482. Fast Freight Line Guide Books.

¶ A. ISSUANCE.

Fast freight line billing or instruction books which are, by reference, made part of carrier's tariffs, are in effect tariffs. The following method of publication and filing of such books and of concurring therein may be followed:²⁵⁸

The interested carriers may arrange for a carrier of their number to execute power of attorney Form FX1, appointing an agent with authority to issue the billing or instruction book in the name, place, and stead of the carrier giving the power of attorney. The publication must show on its title page that it is issued by the person designated in the capacity of agent for the carrier that gives him power of attorney.

It will be sufficient for each of the other initial carriers that uses the billing or instruction book in connection with its tariffs to give concurrence in that book, running to the carrier that issues the book, on Form FX2 or FX5; and for all carriers that participate in the publication as intermediate or terminal carriers to each give general concurrence FX3 or FX4 in the tariffs issued by the carrier granting power of attorney, or its agent.

Concurrences Form FX3 will, without modification, include the billing or instruction books issued by a carrier to which such concurrence has been given, or by its agent under power of attorney, but if such publication names or affects rates *from* the station on lines of concurring carrier concurrence FX2, FX4, or FX5 must be used.

²⁵⁶ Rule 27, Tariff Circular 17-A.

²⁵⁷ Ibid.

²⁵⁸ Rule 15, Tariff Circular 17-A.

¶ B. TARIFF MAY REFER TO FAST FREIGHT LINE BILLING BOOKS.

A tariff may contain rates to base points which must be concurred in by intermediate and terminal carriers over the lines of which the rates apply to such base points, and when the issuing carrier is a party under proper form of concurrence or power of attorney in a billing or instruction book, such tariff may provide for the application of rates to points as specified in the billing or instruction book by specific provision in the tariff, and reference to the I. C. C. number of the billing or instruction book. It is not necessary that such tariff should specify names and concurrence forms and numbers of the intermediate and terminal carriers which are shown as participating carriers in the billing or instruction books. The billing or instruction book is made a part of the tariff by specific reference, and the carriers concurring in the billing or instruction book are thereby made lawful participants in the application of the rates named in the tariff to the points on concurring carrier's line, as authorized in the billing or instruction book.²⁵⁹

§ 483. Tank Line Gauge Books.

A tariff publication confined to information and regulations governing the use of tank cars may be issued, and, except as hereinafter specified, may be supplemented only on statutory notice or under special permission. Supplements to such publication which contain no changes except additions of cars not before listed, substitution of new for old cars, changes in ownership of cars, and corrections in capacities of cars already listed may be issued and made effective upon one day's notice to the Commission and to the public, as required by law.²⁶⁰

In connection with this rule, regulations as to number of supplements to a publication and the volume of supplemental matter that may be contained therein as provided in "*Amendments and Supplements*," Section 473, *ante*, must be observed; and when changes are made on short notice hereunder and

²⁵⁹ Rule 15, Tariff Circular 17-A.

²⁶⁰ See note 62, *supra*.

are incorporated in supplement with other matter brought forward from previous supplement such other matter must be plainly noted as reissued from a former supplement (see "*Amendments and Supplements to Tariffs*," *Section 473, ante*), and no changes except those above specified may be included.²⁶¹

§ 484. Tariffs Governing the Transportation of Explosives.

Under a special act of Congress the Commission prescribed certain regulations governing the transportation of explosives. Such regulations are law to the carriers as well as to the shippers, and they cannot be changed except by act of Congress or by the Commission. The Commission has ruled that it is therefore not considered necessary for each carrier to file with the Commission copy of such regulations as a tariff issue, but it is considered necessary that each tariff which contains rates for the transportation of explosives shall also contain notice that such rates are applicable in connection and in compliance with the regulations fixed by the Interstate Commerce Commission. This provision must be in every tariff issued after November 9, 1908, on which date this ruling was made. The Commission ruled that this provision must be incorporated in tariffs existing at the date by reissue or supplement as early thereafter as practicable.²⁶²

For copy of the regulations prescribed by the Interstate Commerce Commission governing the transportation of explosives, see *Section 455, ante*.

§ 485. Tariffs covering Transportation strictly for the United States, State, or Municipal Governments need not be Published or Filed.

Section 22 of the Act authorizes the carriage, storage or handling of property free or at reduced rates for the United States, State or Municipal Governments.²⁶³

If title to property, such as postal cards, passes to the Government at the point of manufacture, the carrier may agree

²⁶¹ See note 62, *supra*.

²⁶² Rule 106, Con. Rul. Bul. No. 4 (Nov. 9, 1908).

²⁶³ Rule 33, Con. Rul. Bul. No. 4.

upon a rate to be applied for transporting it for the Government to another point, without filing a tariff with the Commission. But if the manufacturer under his contract is required to deliver to the Government at such other point, the transportation must be under the published tariff rate. In other words, if the shipment is made directly by the Government, this rate may be fixed by the carrier without posting and filing the tariff, but not otherwise.²⁶⁴

§ 486. Tariffs covering Freight received in the United States and Carried through a Foreign Country to any Place in the United States.

¶ A. DUTY OF CARRIERS TO PRINT AND POST SCHEDULES OF RATES.

Any common carrier subject to the provisions of the Act to Regulate Commerce receiving freight in the United States to be carried through a foreign country to any place in the United States shall in like manner, as other carriers subject to the Act, print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment.²⁶⁵

¶ B. FREIGHT SUBJECT TO CUSTOMS DUTIES IN CASE OF FAILURE TO PUBLISH THROUGH RATES.

Any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by the Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.²⁶⁶

²⁶⁴ Rule 36, Con. Rul. Bul. No. 4.

²⁶⁵ See note 1, *supra*.

²⁶⁶ *Ibid*.

§ 487. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.

Each carrier files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received which does not bear I. C. C. number next in numerical order to that borne by the last one filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. The Commission has requested that in so far as is possible carriers will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.²⁶⁷

§ 488. Withdrawal of Filed Tariffs not permitted.

The Commission has stated that not infrequently it is requested to return to carriers tariff publications which have been received and filed by it in the ordinary course of business. That such requests are usually based on the desire to substitute some corrected or changed publication for the one that has been filed. The Commission held, that manifestly it would be improper for it to permit such substitutions or to surrender any tariff publication duly and properly received and filed by it, unless such surrender is caused by rejection of such publication by the Commission because of illegality or irregularity in connection therewith. That to surrender publications duly filed and permit the substitution of others would involve a species of falsification of the record which could not be permitted.²⁶⁸

§ 489. Equalizing Rules or Tariffs.

In the not distant past many carriers issued circulars or tariff rules which in effect and substance stated that they would meet any rate made by a competitor or share in any

²⁶⁷ See note 13, supra.

²⁶⁸ Rule 70, Tariff Circular 17-A.

through rate made by a connecting carrier for the purpose of meeting or protecting any rate via another route or gateway. Those rules plainly intended and contemplated that the rates which were not found in that carrier's tariffs should be applied to traffic moving over its lines.²⁶⁹

The law makes it clear that no carrier can lawfully apply to transportation over its lines any rate or change that is not plainly stated in its own tariff at that time, and that all such rules as are now referred to and all practices under such rules are unlawful.²⁷⁰

§ 490. Responsibility of Carriers under Tariffs.

¶ A. OLD SYSTEM OF CONCURRENCES WHICH WAS ALMOST UNIVERSALLY FOLLOWED, AND WHICH WAS UNIVERSALLY ACCEPTED AND RECOGNIZED BY CARRIERS.

On November 15, 1907, the Commission issued the following ruling:²⁷¹ Prior to May 1, 1907, the date upon which the Commission's freight tariff rules became effective, no uniform or definite practice or rule was followed by carriers in regard to concurrence in joint tariffs. The plan most generally followed was for each carrier to file with the Commission a statement that it thereby concurred in any tariff, issued by any carrier, and in which it was shown as a participant, except when it gave to the Commission specific notice of non-concurrence in particular issues. Some carriers, however, did not file such a declaration, but accepted traffic and settlements under joint tariffs in which they were shown as participants, although no concurrence therein had ever been given.

The general, if not universal, understanding and practice was that every carrier had a right to issue tariffs containing joint through rates or fares over the lines of other carriers named therein as participants, to note therein that the carriers named as participants would certify their concurrence to

²⁶⁹ Rule 59, Tariff Circular 17-A.

²⁷⁰ Ibid.

²⁷¹ Rule 83, Tariff Circular 17-A.

the Interstate Commerce Commission, and for all to use such tariffs except in cases where carriers specifically certified to the Commission their nonconcurrence in certain publications.

To now undertake to check out and follow down definite and actual concurrence of carriers in tariffs issued prior to May 1, 1907, would be a hopeless task; and to declare unlawful all tariffs, and participation therein, which were not so definitely and actually concurred in, other than by use thereof, would be to overthrow practically all such joint tariffs and leave transportation in chaos.

Some carriers have sought to evade liabilities under such joint tariffs on the plea that they never concurred therein, although in each instance so far brought to notice, such carrier is shown to have accepted traffic and collected charges thereon in accordance with such tariff up to, and in some instances subsequent to, date of filing notice of nonconcurrence.

¶ B. UNDER TARIFFS FILED PRIOR TO MAY 1, 1907, CARRIERS ARE RESPONSIBLE, IN ACCORD WITH CUSTOM THEN GENERALLY FOLLOWED, EXCEPT WHEN AND AFTER THEY FILED SPECIFIC NOTICE OF NONCONCURRENCE IN CERTAIN ISSUES.

Such complications are impossible as to tariffs issued subsequent to May 1, 1907, if the Commission's tariff regulations are observed. The Commission cannot undertake to now excuse carriers from responsibilities placed upon them by tariffs that were issued prior to May 1, 1907, and in which they are named as participants in conformity with customs that were followed so generally and for so long a time as to render them binding upon those who did not give notice of nonconcurrence, except in accordance with and subsequent to filing of specific notices of nonconcurrence.

The Commission's tariff regulations require that the carrier or joint agent that issues a joint tariff shall, before issuing same, have secured the definite and affirmative concurrence of every carrier shown therein as a participant, and shall show in connection with the name of each participating carrier the

form and number of the instrument by authority of which that carrier is made a party to the tariff.

¶ C. CARRIER NOT BOUND BY BEING NAMED AS PARTICIPANT IN
TARIFF WITHOUT ITS AUTHORITY.

A carrier has no means of preventing another carrier from naming it as a party to a joint tariff without proper authority so to do. It cannot, however, be bound by such unauthorized act, and it is its obvious duty to refuse to recognize or apply any such unlawful issue. It should also at once call attention of the Commission and of the one that issued the tariff to such erroneous action.

¶ D. TARIFF LAWFUL AS TO CARRIERS SHOWN AS PARTICIPANTS
UNDER LAWFUL AUTHORIZATIONS AND UNLAWFUL AS TO
CARRIERS NAMED AS PARTICIPANTS WITHOUT LAWFUL AU-
THORIZATIONS.

If one or more carriers are, without proper authority, so shown as participating in any tariff and other carriers are lawfully shown as parties thereto, the use of the publication is unlawful as to the carriers that are named as parties thereto without proper authority and lawful as to those that are parties to it under proper authority. The carrier over whose line shipments or passengers are sent under a joint tariff is bound, by the terms of that tariff, if it has lawfully concurred therein, and, if it has not lawfully concurred therein, may not accept earnings in accordance therewith, but must demand for the service performed its lawful earnings according to its lawful tariff.

¶ E. RESPONSIBILITY FOR UNLAWFUL INCORPORATION OF A
CARRIER IN A TARIFF.

Responsibility for the unlawful incorporation of any carrier in a tariff will rest upon the carrier that issued the tariff, or, if the tariff is issued by a joint agent and attorney for two or more carriers, will rest upon that one of his principals that accepts and forwards the business under that tariff.

¶ F. POLICY OF COMMISSION ON COMPLAINTS.

In passing upon a complaint of overcharge growing out of improper or unlawful inclusion of any carrier's name in the list of participating carriers in the tariff under which the business was accepted and forwarded the Commission will apply the principles above stated.

§ 491. Tariffs regulating Switching or Terminal Charges between Carriers.

¶ A. JOINT RATE BETWEEN CONNECTING CARRIER AND SWITCHING OR TERMINAL ROAD.

If a joint rate applies to or from a point on a terminal or switching road, and such terminal or switching road receives a division of said rate which is not absorbed by a connecting carrier, the terminal or switching road must publish, post, and file, or concur in and post, the tariff containing the joint rate.²⁷²

¶ B. EVERY SWITCHING OR TERMINAL ROAD MUST FILE ALL CHARGES OR REGULATIONS WHICH ARE APPLIED TO INTERSTATE SHIPMENTS.

A switching or terminal road, even though its lines are purely intrastate, must publish, post, and file in accordance with the law and the Commission's regulations tariff or tariffs containing all its charges upon or for movements of interstate shipments; and this must be done whether or not any part or all of such terminal or switching road's charges on such shipments are paid or absorbed by connecting carriers.²⁷³

¶ C. WHERE THE SWITCHING OR TERMINAL ROAD'S CHARGES ARE ADDED TO THE RATE.

If a switching or terminal road's charges are to be added to the tariff charges of a connecting carrier the tariff of such connecting carrier quoting such rates to or from the point at which such terminal or switching road is located must clearly

²⁷² See note 62, supra.

²⁷³ Ibid.

state that shipments thereunder are subject to additional charges for terminal service in accordance with the current tariffs of terminal or switching roads as same are on file with the Interstate Commerce Commission.²⁷⁴

¶ D. WHERE THE SWITCHING OR TERMINAL ROAD'S CHARGES ARE ABSORBED BY THE CONNECTING CARRIER.

If part or all of the charges of a terminal or switching road are to be absorbed by a connecting road, the tariff of such connecting road must specify that its rate includes originating or delivery services by the terminal or switching road, and that the connecting road will absorb the charges of such terminal or switching road in a specified sum, or, as per the current tariffs of the terminal or switching road (*naming it*) as on file with the Interstate Commerce Commission.²⁷⁵

¶ E. CHARGES COVERING SWITCHING SERVICES MUTUALLY PERFORMED BY CONNECTING CARRIERS.

When connecting carriers other than terminal or switching roads switch for each other and absorb part or all of each other's charges, their switching charges must be shown in lawfully filed and posted tariffs, and their tariffs must also state the circumstances under which and the instances in which they will absorb other carriers' switching charges, and must specify that such absorption will be in a stated sum per 100 pounds, per ton, or per car, or, as per tariffs on file with the Interstate Commerce Commission.²⁷⁶

§ 492. Index of Freight Tariffs.

¶ A. CARRIERS MUST PUBLISH COMPLETE INDEX OF THEIR TARIFFS.

Each carrier shall publish under proper I. C. C. number, post, and file a complete index of tariffs which are in effect and to which it is a party either as an initial or a delivering carrier.

²⁷⁴ See note 62, *supra*.

²⁷⁵ *Ibid*.

²⁷⁶ *Ibid*.

¶ B. ARRANGEMENT OF INDEX.

Such index shall be prepared in sections, as indicated in the following paragraphs, and shall show: (a) I. C. C. number; (b) carrier's own number; (c) index number; (d) initials of issuing road or agent; (e) issuing road or agent's number; (f) character of tariff or description of the articles upon which it applies; (g) where tariff applies from; (h) where tariff applies to.²⁷⁷

NOTE.—Items (b), (c), and (e) may be omitted. Items (f), (g), and (h) will be stated in concise general terms.

First Section. A list of all the tariffs as to which the carrier is an initial carrier. Commodity tariffs to be entered alphabetically under names of commodities or principal commodities. Tariffs applying to different groups of the same commodity must be grouped together; e. g., "Lumber—Hardwood;" "Lumber—Yellow Pine," etc.²⁷⁸

Following the specific commodity tariffs will be entered the general commodity tariffs, the class and commodity tariffs, and the class tariffs. Under each of these heads the application of the tariffs will be described by alphabetical arrangement of the points or territory from or to which they apply, in either the "From" or "To" column.

Under the head of "Miscellaneous Schedules" will follow list of schedules, such as billing books, classifications, exception sheets, switching tariffs, terminal charges, etc., each entered in alphabetical order.²⁷⁹

Second Section. List of all tariffs under which the carrier is a delivering carrier arranged alphabetically by names of issuing carriers or agents, with the items arranged by commodities and classes under each of such carriers or agents, as prescribed for the first section.

Third Section. A complete list of the numbers of tariffs of its own I. C. C. series arranged in numerical order.

If a carrier so desires, lists of its division sheets, official cir-

²⁷⁷ Rule 11, Tariff Circular 17-A.

²⁷⁸ Ibid.

²⁷⁹ Ibid.

culars, etc., may appear in this publication. Tariffs covering specific circus movement and supplements to tariffs need not be included in indices.

¶ C. REVISION AND SUPPLEMENTS.

If any changes are made the index must be revised to date, either by reissue each month, or by supplement each month and reissue every six months. If supplements are used they must be constructed in accord with specifications as to construction of index, and shall show additions, changes, and cancellations made in index or previous supplement thereto. Not more than two supplements to any index may be in effect at any time, and the provisions under section on Amendments and Supplements must be observed with relation thereto.²⁸⁰

¶ D. NOTATION ON TITLE-PAGE.

Each index must bear on its title-page notations, as follows: "This index contains lists of tariff publications in effect on [*date of issue of index*];" to which may be added, "or which have been filed to become effective at a later date as shown within." If supplements to index will not be used, "No supplement to this index will be issued;" if supplements will be used, "Only two supplements to this index will be in effect at any time."²⁸¹

Each supplement to index must bear on title-page the notation. "This supplement contains corrections to and as in effect on [*date of issue of supplement*];" to which may be added, "or which have been filed to become effective at a later date as shown within."²⁸²

¶ E. DATE OF ISSUE BUT NO EFFECTIVE DATE.

The title-page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notations above and must not bear an effective date. The rule

²⁸⁰ Rule 11, Tariff Circular 17-A.

²⁸¹ Ibid.

²⁸² Ibid.

requiring thirty days' notice does not apply to these indices and their supplements.²⁸³

NOTE.—This rule is also in rules governing passenger tariffs. One index containing both freight and passenger tariffs will be deemed sufficient, but if both are included in one index it must be given an I. C. C. number in both freight and passenger series and four copies must be sent to the Commission.²⁸⁴

§ 493. Tariffs containing Rail-and-Water and All-Water Rates.

Tariffs containing rail-and-water and all-water rates applicable via routes upon which it is necessary to close navigation during a portion of the year, and which do not become effective and expire by specified expiration within the same season of navigation, may provide for suspension and restoration of the rail-and-water rates and the all-water rates named therein under the following regulations:²⁸⁵

¶ A. NOTATION ON TITLE-PAGE OF TARIFF.

The following notation shall appear on the title-page of the tariff: "The rates named herein for rail-and-water and all-water transportation are subject to suspension at the close of navigation and restoration on the opening of navigation of [*here insert the name of the water carrier or carriers specified in the tariff*] on notice as provided on page ... of this tariff."

¶ B. RULE IN TARIFF PROVIDING FOR SUSPENSION AND RESTORATION OF RATES.

In the rules governing the tariff shall appear the following.²⁸⁶

In anticipation of opening of navigation of [*here insert the name of water carrier or carriers named in the tariff*] restoration of the rail-and-water and all-water rates contained in this tariff and in effective supplements thereto which were in force on the date the rates were last suspended or which have subsequently been made effective, will be announced by supplement to this tariff which will be filed with the Interstate Commerce Commission, be posted at points from which the rates apply, and become effective not less than three days thereafter.²⁸⁷

²⁸³ Rule 11, Tariff Circular 17-A.

²⁸⁴ Ibid.

²⁸⁵ Rule 12, Tariff Circular 17-A.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

NOTE.—This effective date shall not be such as to follow more than thirty days at point of transshipment for reforwarding by the water carrier.²⁸⁸

The rates in this tariff and in supplements thereto for rail-and-water and all-water transportation are effective only during the season of navigation of [*here insert the name of water carrier or carriers named in the tariff*] until [*here insert date upon which freight can be forwarded from point of shipment and with reasonable certainty reach the point of transshipment prior to the last sailing of water carrier.*] From that date and until announcement by supplement to this tariff to the date which wholly suspends rates for the season, shipments will be accepted under this tariff only subject to the provision that in the event of such shipment being in excess of the available vessel capacity at time of arrival at port of transshipment or of arrival too late for forwarding by vessel, the same will be forwarded via all-rail route and be subject to the tariff rates via such all-rail route in effect on the date of shipment from the point of origin; shipping receipts, bills of lading, and waybills must bear notation to this effect. The supplement announcing the close of navigation and the suspension of rail-and-water, and all-water rates named in this tariff and in its effective supplements will be filed with the Interstate Commerce Commission and will be posted at points from which the rates apply not less than three days in advance of the date from which the rates will be suspended from points of original shipment.

¶ C. ROUTES OTHER THAN GREAT LAKES MAY SUSPEND OR RESTORE ON ONE DAY'S NOTICE.

Where the tariff suspended or restored under this rule applies to joint transportation by rail and river, or canal, or inland lakes other than the Great Lakes, such tariffs may be suspended or restored on a like notice of one day instead of three days.²⁸⁹

¶ D. SUPPLEMENTS MAY CONTAIN.

Supplements issued under this rule announcing suspension and restoration of rail-and-water and water rates in tariffs must not contain anything except such suspension or restoration notice or notices. Only one such supplement announcing suspension or restoration of the rates in a tariff may be in effect at any time, and such supplement will not be counted against the number of supplements permitted to such tariff under rule relating to Amendments and Supplements.²⁹⁰

²⁸⁸ Rule 11, Tariff Circular 17-A.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

¶ E. SUSPENDED TARIFFS MAY BE REISSUED OR AMENDED.

Rail-and-water and all-water rates suspended under this rule may be reissued or amended during such period of suspension upon statutory notice the same as though the rates were in effect and active use, but the restoration of the rates by supplement notice will not advance the effective date of any supplement to the tariff which has not on the date of restoration become effective. Supplements made effective prior to the date of restoration will be made effective on a given date, or may be stated to be "Effective with restoration of tariff and supplements for season of 19... [*to be announced by subsequent supplement*], but not earlier than [*statutory notice*] 19..., nor earlier than noted in individual items."

Statutory notice of suspension, withdrawal or restoration of rates or regulations must be given as to all tariffs that do not contain the provisions of paragraphs A and B of this section.²⁹¹

¶ F. STORAGE AND TRANSIT PRIVILEGES.

The provisions of the section applying to publication of terminal charges, diversion, reconsignment, transit privileges, etc., will also apply to carriers in rail-and-water lines and to tariffs applying on such lines, and in addition thereto, if storage or transit privilege is given at port of transshipment on the Great Lakes in connection with a joint rail-and-water rate upon which shipment moves from point of origin, the initial carrier's tariff which contains such rate must also contain the privilege or the charge, or give specific reference by I. C. C. number to the tariff of the carrier that grants the privilege or performs the service which contains such regulation and charges connected therewith.²⁹²

§ 494. Rate Schedules rejected by the Commission.

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication that is issued in lieu of such re-

²⁹¹ Rule 11, Tariff Circular 17-A.

²⁹² Ibid.

jected schedule, "In lieu of rejected by Commission;" nor should the number which it bears be again used.²⁹³

§ 495. Receipt by and Filing of Tariffs with the Commission does not Relieve Carriers from Liability for Violation of the Act or Regulations thereunder.

The law affirmatively imposes upon each carrier the duty of filing with the Commission all of its tariffs and amendments thereto, as prescribed in the law or in any rule relative thereto which may be announced by the Commission, under penalty for failure so to do, or for using any rate which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff or supplement to a tariff, is in the files of the Commission will not serve or operate to excuse the carrier from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.²⁹⁴

§ 496. Rates Prescribed in Commission's Decisions must be Promulgated in Tariffs and Commission Notified.

Rates prescribed by the Commission in its decisions and orders after hearings upon formal complaints shall, in every instance, be promulgated by the carriers against which such orders are entered in duly published, filed, and posted tariffs, or supplements to tariffs, and notice shall be sent to the Commission that its "order in case No. . . . has been complied with in item , page of tariff, I. C. C. No. . . . , or supplement to tariff, I. C. C. No."²⁹⁴

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five (5) days' notice to the Commission and to the public, and if made effec-

²⁹³ See note 13, *supra*.

²⁹⁴ *Ibid*.

tive on less than statutory notice, either under this rule or under special authority granted in the order in the case, shall bear on its title-page the notation, "In compliance with order of Interstate Commerce Commission in case No."²⁹⁵

§ 497. Circulars announcing Compliance with Orders of Court.

Circulars announcing or explaining the attitude and course of carriers under injunction of a court, relating to tariff rates or regulations, must not be issued as supplements to a tariff nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission has stated, that it will, however, be pleased to have copies of such circulars and the information therein contained.²⁹⁶

§ 498. Maintenance of Relative Adjustment in issuing Tariffs to Conform with Formal Order of the Commission.

¶ A. RIGHT OF CARRIER PARTY TO A CASE OR PARTICIPANT IN JOINT TARIFF INVOLVED IN SUCH CASE TO ADJUST ITS RATES TO CONFORM TO ORDER OF COMMISSION.

In establishing rates or regulations under an order of the Commission in a formal case, the carrier or carriers that are actually and on the record parties to the case, or that are lawful parties to a joint tariff in which the rate or regulation that is prescribed is published by some carrier that is party to the case, may include in the change or changes made in compliance with the Commission's order commodity or commodities that are grouped with that or those which are specified in the order; and may also include adjustment of other points in order to preserve established grouping or relation of points, and may also include adjustment of rates to same points on other commodities for the purpose of maintaining established relation of rates between commodities: *Provided*, all such

²⁹⁵ See note 13, *supra*.

²⁹⁶ *Ibid*.

changes made by authority of this rule shall be effected by reductions in rates or charges.²⁹⁷

¶ B. CARRIER NOT PARTY TO A CASE NOR PARTICIPANT IN JOINT TARIFF AS ABOVE MUST SECURE SPECIAL PERMISSION OF COMMISSION.

If a carrier that is not a party to the case or to the joint tariff desires to make on less than statutory notice the same changes that are made under the order by carrier that is party to the same, it must secure special permission so to do.²⁹⁸

§ 499. Rates for hauling Private Cars.

It is the legal duty of a carrier to publish and file its rates and regulations for the movement of private cars.²⁹⁹

§ 500. Industrial or Terminal Roads as Parties to Joint Tariffs.

An industrial or terminal railroad may become a party to joint tariffs, provided such road is a common carrier.³⁰⁰

§ 501. Tariffs cannot be given a Retroactive Effect.

Tariffs cannot be given a retroactive effect; they cannot be made to apply to conditions other than those existing upon the date when such tariffs became effective.³⁰¹ It would be altogether intolerable if changes could be made retroactive, as well from the carrier's standpoint as from the shipper's.

§ 502. All State or other Rates used for Interstate Shipments must be Posted and Filed.

Rates for through shipments are often made by adding together two or more rates. All State or other rates used in combination for interstate shipments must be posted at points

²⁹⁷ See note 13, *supra*.

²⁹⁸ *Ibid*.

²⁹⁹ *Carr v. Nor. Pac. Ry. Co.* (1901), 9 I. C. C. R. 1.

³⁰⁰ *Central Yellow Pine Association v. V. S. & P. Rd. Co. et al.* (1904), 10 I. C. C. R. 193; *Re Division of Joint Rates and other allowances to Terminal Railroads*, 10 I. C. C. R. 385.

³⁰¹ *In the Matter of Through Routes and Through Rates* (1907), 12 I. C. C. R. 164.

from which they apply and filed with the Commission, and can only be changed as to such traffic in accordance with the terms of the Act.³⁰²

When rates established to apply between points within a single State are applied as part of combination rates on transportation between different States, such State rates along with the interstate rates with which they are combined, must be published at stations and filed with the Commission as provided by Section 6 of the Act to Regulate Commerce.³⁰³

Under the Act to Regulate Commerce, requiring several common carriers operating a through line engaged in interstate commerce to file schedules of rates constituting the basis of a through interstate rate, each carrier, though operating a line wholly within a State, which line is a portion of a through route engaged in interstate commerce between several connecting carriers, is bound to comply with such Act.³⁰⁴

§ 503. All Local Tariffs should have I. C. C. Numbers and be Posted and Filed.

The Commission believes it is proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in the manner prescribed in the Act.³⁰⁵

§ 504. Tariffs of Water Carriers.

¶ A. INLAND WATER CARRIERS.

Inland water carriers are not required to publish, post, nor file their tariffs of rates unless they are engaged in interstate commerce under a common control, management, or arrangement for a continuous carriage or shipment with a railroad as described in the first section of the Act to Regulate Commerce.

³⁰² See note 11, *supra*.

³⁰³ In the Matter of Export Rates from Points East and West of the Mississippi River, 8 I. C. C. R. 185.

³⁰⁴ United States v. N. Y. C. & H. R. Rd. Co. (1907), 153 Fed. Rep. 630; Dist. Ct. W. D. New York, Re Export Rates on Corn, etc. (1899), 8 I. C. C. R. 185.

³⁰⁵ See note 11, *supra*.

¶ B. OCEAN CARRIERS.

Ocean carriers between ports of the United States and foreign countries *not adjacent* are not subject to the terms of the Act to Regulate Commerce, and under its present provision cannot become subject thereto; nor to the jurisdiction of the Commission.

Neither are ocean carriers engaged in the coastwise commerce between our different States or between points in the United States and adjacent foreign countries, unless, of course, they are engaged in such commerce in connection with a rail carrier under a common control, management or arrangement for a continuous carriage or shipment in accordance with Section 1 of the Act.

§ 505. Lessee Road not serving Public as Common Carrier.

For operating purposes only a carrier leased 20 miles of its lines to another railroad company. The contract required the lessee for an agreed compensation to be paid to it by the lessor, to operate the lessor's trains and to maintain its way, tracks, and appurtenances, the rates and charges to be collected by the lessor and the lessee to have no direct dealings with the public. On the facts as stated in the inquiry, the Commission *held*, That the lessor must publish the rates, fares, and charges, and the lessee need not be a party to the tariffs nor concur therein, but is simply a contractor performing certain services for the lessor.³⁰⁶

§ 506. Tariffs Covering Export and Import Traffic.

¶ A. RATES TO BE PUBLISHED AND FILED WHEN THE INLAND RAIL CARRIER AND OCEAN CARRIER ARE OPERATING SEPARATELY.

The Act to Regulate Commerce provides that the Commission shall exercise jurisdiction over the inland portion of the haul, either to or from a foreign country; and it must logically and necessarily follow that the rate which must be filed with

³⁰⁶ Rule 180, Con. Rul. Bul. No. 4 (May 10, 1909).

the Commission under Section 6 of the Act is the rate governing such movement.³⁰⁷

On foreign commerce the rate to be published with the Commission should be the rate to the port and from the port—an open rate, which any who desire to do so may use with equal advantage.³⁰⁸

The rates of transportation from places in the United States to ports of transshipment, and from ports of entry to places in the United States, of properties in foreign commerce carried under through bills of lading, are required to be filed and published by the amended Interstate Commerce Act.

That public policy urgently requires that the inland transportation of import and export commerce should be subject to the Act to Regulate Commerce, and that the publishing and maintaining of tariffs upon such traffic imposes in most instances no hardship upon the carrier.³⁰⁹

The Supreme Court of the United States has decided that if foreign commerce is carried under an aggregate through rate which is the sum of the ocean rate and the rate from or to a place in the United States to or from the port of transshipment or of entry, the latter rate is required to be filed and published.³¹⁰ Such rates must be published the same as domestic rates,³¹¹ and the tariff should include all terminal charges and any expenses connected with the transportation.³¹²

The inland carriers of traffic exported to or imported from

³⁰⁷ *Cosmopolitan Shipping Co. v. Hamburg-American Packet Co.* (1908), 13 I. C. C. R. 266; see also *Kemble v. B. & A. Rd. Co.* (1889), 8 I. C. C. R. 110.

³⁰⁸ *Ibid.*

³⁰⁹ In the Matter of the Publication and Filing of Tariffs on Export and Import Traffic (1904), 10 I. C. C. R. 55; see also in *Re Export and Domestic Rates*, 8 I. C. C. R. 214.

³¹⁰ *Armour Packing Co. et al. v. United States* (1907), 153 Fed. Rep. 1, affirmed in 82 C. C. A. 135, affirmed in 209 U. S. 56, 52 L. ed. 681, 28 Sup. Ct. Rep. 428; see also *Re Export and Domestic Grain Rate*, 8 I. C. C. R. 214 (1899).

³¹¹ See note 309, *supra*.

³¹² *New York Produce Exchange v. N. Y. C. & H. R. R. Co.* (1889), 2 I. C. R. 553; 3 I. C. C. R. 137; see also *New Orleans Cotton Exchange v. L. N. O. & T. P. Ry. Co.* (1891), 4 I. C. C. R. 694; 3 I. C. R. 523.

a foreign country not adjacent must publish their rates to the ports and from the ports, and such rates must be the same for all regardless of what ocean carrier may be designated by the shipper.³¹³

¶ B. WHERE A JOINT THROUGH RATE HAS BEEN ESTABLISHED BETWEEN THE INLAND RAIL CARRIER AND THE OCEAN CARRIER.

The United States Supreme Court has held that if foreign commerce is carried under a joint through rate by virtue of a common control, management, or arrangement of the inland and ocean carrier, the joint rate is required to be filed and published.³¹⁴

The Commission has held that as a matter of convenience to the public, carriers may publish in their tariffs through export and import rates to or from foreign ports as they may make in connection with ocean carriers, but that such rates must, however, distinctly state the inland rate; and need not be concurred in by the ocean carrier, because concurrence can be required from and effective against, only carriers subject to the Act.³¹⁵

¶ C. STEAMSHIP CHARGES MAY BE SHOWN IN INLAND CARRIERS' TARIFFS.

It is permissible for a carrier to state in connection with its inland rates the additional steamship charges which go to make up through rates to or from foreign destination.³¹⁶

The inland rate, however, must be open to all alike regardless of what ocean carrier may be designated by the shipper.³¹⁷

¶ D. STATUTORY NOTICE REQUIRED—EXCEPTION.

The Commission has ruled that whatever plan of published export and import rates is followed the tariffs must be filed and posted, and may be changed only upon statutory notice or under special permission from the Commission for a shorter time, except that, in consideration of unusual and special cir-

³¹³ Rule 71, Tariff Circular 17-A.

³¹⁴ See note 310, *supra*.

³¹⁵ See note 313, *supra*.

³¹⁶ *Ibid*.

³¹⁷ *Ibid*.

cumstances surrounding the movement of traffic exported to or imported from foreign countries not adjacent to the United States and which moves through parts of the United States or Canada on the Pacific Ocean, as to said traffic and confined to tariffs which contain only rates applicable to such traffic, the Commission by its order of October 24, 1908, authorized carriers to make changes in said rates upon notice to the Commission and to the public, in manner prescribed by law, of three days, as to changes which effect reductions in rates or charges and like notice of ten days as to changes which effect increases in rates or charges.³¹⁸ Tariffs issued upon short notice under authority of that order must bear notation, "Issued under authority of Rule 71, Tariff Circular 17-A."

¶ E. POSTING TARIFFS ON EXPORT AND IMPORT TRAFFIC.

The publication of inland joint tariffs for the transportation of foreign merchandise to inland points in the United States should be made at the port of entry and also at the point of destination of the freight in the United States by posting the same in a public place at the depot of the carrier where the freight is received in the port of entry and where it is delivered at the place of destination in the United States.³¹⁹

§ 507. Maxima Rates not Specific Rates.

¶ A. RATES AND THEIR APPLICATION MUST BE SPECIFICALLY STATED.

The rulings of the Commission prohibit including in a tariff any rule or regulation which in any way or in any terms authorizes substituting for any rate named in the tariff a rate found in any other tariff or made upon any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part. These rules are intended to bring about entire discontinuance of tariff rules which provide that rates named in the tariff will apply to certain points "as maxima," or that if a combination on some

³¹⁸ See note 313, supra.

³¹⁹ New York Board of Trade, etc., v. Pennsylvania Co. (1891), 4 I. C. C. R. 447; 3 I. C. R. 417.

gateway or basing point makes less than the rates named in the tariff such combination will apply, or for equalizing or protecting any fare via another line or route or gateway, etc. The intent is that tariffs shall state in specific, clear and unambiguous terms the rates and their application.³²⁰

¶ B. RATES TO OR FROM INTERMEDIATE POINTS.

The rulings of the Commission provide that a tariff shall contain complete alphabetical indices of the points from and to which it applies. The Commission has held that this is not to be understood as prohibiting the incorporation in a tariff of a rule providing for the affirmative and definite application of the rates named in that tariff to or from points not indexed and which are directly intermediate on the same line with the points that are indexed.³²¹

¶ C. SPECIFIC JOINT THROUGH RATES MUST BE INVARIABLY APPLIED.

In every instance where there is a *specific* rate from point of origin to point of destination it must be applied to through freight regardless of possible lower combinations.³²²

§ 508. Copies of Schedules and Tariffs of Rates to be preserved as Public Records in custody of Secretary of Commission.

The statute provides that copies of all schedules and classifications and tariffs of rates and charges filed with the Commission in accordance with the provisions of the Act shall be preserved as public records in the custody of the secretary of the Commission.³²³

§ 509. Certified Copies of Tariffs as Prima Facie Evidence.

The Act provides that the copies of schedules and classifications and tariffs of rates, and charges, and of all contracts, agreements, and arrangements between common carriers filed

³²⁰ Rule 64, Tariff Circular 17-A.

³²¹ Ibid.

³²² Ibid.

³²³ Act to Regulate Commerce. Section 16 (as amended June 18, 1910).

with the Commission and in custody of the secretary of the Commission, shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, or arrangements made public records as aforesaid, certified by the secretary under the seal of the Commission shall be received in evidence with like effect as the originals.³²⁴

§ 510. Carriers cannot advance Charges to Water Carriers unless they are Parties to the Tariff.

Certain carriers have been in the habit of advancing the charges of sailing vessels, boats and barges bringing vegetables to their terminals to be forwarded to interstate destinations, and of entering the amount on waybills as charges in addition to their tariff rates. Upon inquiry whether the carriers may lawfully continue this practice it was held that if the boats are common carriers, making regular trips and offering their services to the general public they must file tariffs and the practice must be discontinued until they do so.³²⁵

§ 511. Departure from Published Tariff declared to be a Misdemeanor and Penalty Therefor.

See *Section 766, post.*

§ 512. Failure of Carrier to publish Rates a Misdemeanor and Penalty therefor.

See *Section 766, post.*

§ 513. Penalty for Failure of Carrier to comply with Tariff Regulations promulgated by Commission.

See *Section 767, post.*

§ 514. Express Company Freight Tariffs or Rate Schedules.

See *Chapter 31, post.*

³²⁴ Act to Regulate Commerce. Section 16 (as amended June 18, 1910).

³²⁵ Rule 62, Con. Rul. Bul. No. 4 (April 14, 1908).

CHAPTER XXXI.

EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

SECTION

515. Publication of Rates and Charges for Transportation.
516. Filing Tariffs, Classifications, Exception Sheets, Supplements, Concurrences, etc., with the Interstate Commerce Commission.
517. Posting of Tariffs or Rate Schedules.
518. Jurisdiction of the Interstate Commerce Commission over the Publication, Posting and Filing of Express Tariffs or Rate Schedules.
519. Notice required for Publication of Rates and Changes therein.
520. Rules and Regulations affecting Rates.
521. Different Kinds of Express Tariffs defined.
522. Tariffs must be printed.
523. Form and Size of Express Tariffs.
524. Information to be shown on Title-Pages of Express Tariffs.
525. Information that Express Tariffs shall contain.
526. Basing Tariffs.
527. Joint Basing Transfer Tariffs.
528. Limiting Use of Terms "Missouri River Points," "General Specials," etc.
529. Commodity Rates must be Specific.
530. Commodity Rate the only Rate that can lawfully be Used.
531. Rates for Mixed Shipments.
532. Cancellation of Tariffs or Parts thereof.
533. Amendments and Supplements to Tariffs.
534. Index of Express Tariffs.
535. Tariffs to or from Season or Summer Offices.
536. All State or other Rates used for Interstate Shipments must be Posted and Filed.
537. All Local Tariffs should have I. C. C. Numbers and be Posted and Filed.
538. Receipt by and Filing of Tariffs with Commission does not Relieve Express Companies from Liability for Violation of Act or Regulations thereunder.
539. Rejected Schedules.
540. Rates Prescribed in Commission's Decision must be Promulgated in Tariffs.

SECTION

- 541. Circulars Announcing Compliance with Orders of Court.
- 542. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.
- 543. Agents Authorized to issue Tariffs, Classifications, Exception Sheets and Supplements thereto.
- 544. Concurrence by Express Companies in Tariffs Issued and Filed by another Express Company or its Agents.
- 545. Letter of Transmittal accompanying Tariffs Filed with the Commission.
- 546. Withdrawal of Filed Tariffs not permitted.
- 547. Tariffs covering Export and Import Traffic.
- 548. Responsibility of Express Companies under Tariffs.
- 549. Maxima Rates not Specific Rates.

In considering the subject of tariffs of Express Companies it should be noted that all the general principles applicable to railroad freight tariffs are equally applicable to express tariffs and may be applied by analogy to such.

§ 515. Publication of Rates and Charges for Transportation.

See *Section 456, ante*.

§ 516. Filing Tariffs, Classifications, Exception Sheets, Supplements, Concurrences, etc., with the Interstate Commerce Commission.

¶ A. FILING BY PROPER OFFICER OR DESIGNATED AGENT.

Tariffs, classifications, and exception sheets and supplements thereto, shall be filed with the Commission by proper officer of the express company or by an agent designated to perform that duty.¹

¶ B. CONCURRENCE OF PARTICIPATING CARRIERS.

The concurrence of every carrier, amenable to the Act to Regulate Commerce, participating in the tariffs, etc., as stated in the preceding paragraph must be on file with the Commission or accompany the tariff or supplement.²

¹ Rule 13, Tariff Circular 16-A.

² Ibid.

¶ C. TWO COPIES OF ALL TARIFFS MUST BE FILED WITH THE COMMISSION.

Express companies and their agents are directed, in filing schedules in compliance with the statute to transmit two (2) copies of each tariff, supplement, classification, or other schedule of rates or regulations, for the use of the Commission, both copies to be included in one package and under one letter of transmittal.³

¶ D. HOW TARIFFS FILED WITH THE COMMISSION MUST BE ADDRESSED.

All tariffs sent for filing with the Commission must be addressed "Auditor, Interstate Commerce Commission, Washington, D. C."⁴

¶ E. TARIFFS MUST BE DELIVERED TO THE COMMISSION FREE FROM ALL CHARGES OR CLAIMS FOR POSTAGE.

No tariff or supplement will be accepted by the Commission for filing unless it is delivered to the Commission, free from all charges or claims for postage.

¶ F. TARIFFS MUST BE DELIVERED TO THE COMMISSION WITHIN FULL STATUTORY TIME.

All tariffs or supplements must be delivered to the Commission within the full thirty days required by law before the date upon which such tariff or supplement is stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held by the Post-Office Department because of insufficient postage.⁵

For tariffs and supplements issued on short notice under special permission of the Commission, full thirty days' notice is not required, but literal compliance with the requirements for notice named in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.⁶

³ Rule 14, Tariff Circular 16-A.

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

¶ G. DISPOSITION OF TARIFFS RECEIVED BY COMMISSION TOO
LATE TO GIVE STATUTORY NOTICE.

A tariff or supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law, will be returned to the sender, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction.⁷ In other words, when a tariff or a supplement is issued and as to which the Commission is not given the statutory notice it is as if it had not been issued, and full statutory notice must be given of any reissue thereof. No consideration will be given to telegraphic notices in computing the thirty days' notice required.⁸

§ 517. Posting of Tariffs or Rate Schedules.

See *Section 458, ante*.

§ 518. Jurisdiction of the Interstate Commerce Commission
over the Publication, Posting and Filing of Express
Tariffs or Rate Schedules.

See *Section 459, ante*.

§ 519. Notice required for Publication of Rates and Changes
therein.

¶ A. STATUTORY NOTICE.

Section 6 of the Act as amended June 29, 1906, provides that:

"No change shall be made in the rates and charges, or joint rates and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public, published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates or charges will go into effect; and the proposed changes shall be shown

⁷ Rule 14, Tariff Circular 16-A.

⁸ *Ibid*.

by *printing new schedules*, or shall be plainly indicated *upon the schedules* in force at the time and kept open to public inspection.”

¶ B. RATE CHANGES FILED AND PUBLISHED MUST BECOME EFFECTIVE AND CAN BE CHANGED ONLY ON THIRTY DAYS' NOTICE.

The provision of the Act quoted in the preceding paragraph plainly refers to rates which have already become effective, and also applies the term “proposed changes” to rates which have not become effective. It follows that after notice of a change in rates has been filed and published the new rates must be allowed to go into effect, and can only be withdrawn, canceled, or superseded upon notice filed and published for at least thirty days after the date when the rates have become effective. A tariff may contain a notation that rates therein stated will expire upon a date therein specified which is at least thirty days subsequent to the date on which such rates become legally effective, and this will be legal notice of the cancellation or withdrawal of such rates.⁹

¶ C. POWER OF INTERSTATE COMMERCE COMMISSION TO ALLOW CHANGES ON LESS THAN STATUTORY NOTICE.

Express companies must comply fully with the requirements of the law respecting the filing, publication, and taking effect of proposed rates unless upon application and for good cause shown the Commission, in the exercise of authority conferred upon it, shall allow rates to be changed or withdrawn upon less than thirty days' notice or by formal order otherwise modify such requirements. No regulation or rule of the Commission is authority to change rates or issue tariffs on less than statutory notice unless so specifically provided in the rule or regulation.¹⁰ The Commission in pursuance of its authority to permit changes on less than statutory notice has issued general orders applicable to special conditions and circumstances as noted in the succeeding paragraphs.

⁹ Rule 26, Tariff Circular 16-A.

¹⁰ Ibid.

¶ D. REQUESTS FOR PERMISSION TO AMEND TARIFFS ON LESS THAN STATUTORY NOTICE.

As stated above the Act authorizes the Commission in its discretion and for good cause shown, to permit changes in tariff rates on less than statutory notice.¹¹ This authority should be exercised only in instances where special or peculiar circumstances and conditions fully justify it. Confusion and complication must follow indiscriminate exercise of this authority.¹²

Application to Commission.

Such application must be in proper form and over the signature of a general officer of the company, specifying title.¹³ The Commission has requested that as far as possible these applications be sent by mail and not by telegraph. Action will only be taken on receipt of the verified application.¹⁴

¶ E. WHERE FULL NOTICE WAS GIVEN BY COMPETING EXPRESS COMPANY.

Desire to meet the rates of a competing express company which has given the full statutory notice of change in rates will not of itself be regarded as good cause for allowing changes in rates on a notice of less than thirty days.¹⁵

¶ F. PERMISSION TO CHANGE RATES ON SHORT NOTICE LIMITED TO EMERGENCY OR NECESSITY.

This authority will be exercised only in cases where actual emergency and real merit are shown. Clerical or typographical errors in tariffs constitute good cause for the exercise of this authority, but every application based thereon must plainly specify the omission or mistakes and be presented with reasonable promptness after issuance of the defective tariff.¹⁶

¹¹ Rule 29, Tariff Circular 16-A.

¹² Rule 31, Tariff Circular 16-A.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid.

¶ G. AMENDMENT OF JOINT TARIFFS ON LESS THAN STATUTORY NOTICE.

A request from one party to a joint tariff for permission to amend such tariff on less than statutory notice necessarily raises some question of doubt as to the wishes or concurrence of other interested parties of the tariff. It is desirable and proper that any such permission given by the Commission should affect alike all parties to the tariff that is to be amended under it. The Commission therefore decided:

Applications by Express Company or Agent Authorized to File the Tariff.

That when an express company gives an agent authority to file tariff or tariffs and supplements thereto in its name, place, and stead, or concurrence in tariff or tariffs and supplements thereto which another express company or its agent may file thereunder, the agent or express company to which such authority or concurrence is given has, under the terms of the authority or concurrence, the power and the right to request, in the name and on behalf of the express companies participating in such tariff or tariffs, permission to amend same on less than statutory notice.¹⁷

Request must come from one who Issues the Tariff.

Such requests as to joint tariffs must be made by the agent or the express company that is authorized to file the tariff and in making them form same as that prescribed for use of individual carrier shall be used, except that the request must state that it is made in the name and on behalf of all parties to the tariff, and that formal authority to file the tariff, or formal concurrence in the tariff, is on file with the Commission from each of them.¹⁸

Concurring Express Companies Bound by Act of Authorized Agent.

Request will be signed and verified by the agent or officer who makes it, and every express company that has, by formal

¹⁷ See note 11, supra.

¹⁸ Ibid.

authority or concurrence, made itself a party to such tariff will be held bound by the act of its agent under such authority or by its concurrence.¹⁹

¶ H. REDUCTION OF JOINT RATE TO EQUAL SUM OF LOCALS.

Where a joint rate is in effect by a given route between any points which is higher than the sum of the locals between the same points, by the same or another route, and such joint rate has been in effect thirty days or longer, such higher joint rate may, until further notice from the Commission, be changed by reducing the same to the sum of such locals, but not otherwise, upon posting and filing with the Commission one day in advance *a supplement to the tariff in which the joint rate so reduced appears*, which supplement shall show the reduced rate; shall bear notation that it is effective on less than statutory notice "by authority of Rule 28, Interstate Commerce Commission's Tariff Circular No. 16-A;" shall show on title page, or in connection with such item, by identifying references and I. C. C. numbers, the tariffs that contain the locals which make up the new joint rate.²⁰

¶ I. JOINT RATE GREATER OR LESS THAN SUM OF LOCALS.

Two or more connecting express companies may establish a joint rate only upon notice of thirty days or under special permission; provided, that until otherwise ordered by the Commission express companies may establish on one day's notice to the Commission and to the public, tariffs or tariff supplements naming joint rates over the lines of two or more express companies between points as to which no joint rates are in effect via their lines, provided that such joint rates, so established, do not in any way, manner, or extent, increase the rates or charges demanded from shippers. Tariffs or tariff supplements issued under this rule must bear notation: "Issued by authority of Rule 27, Interstate Commerce Commission's Tariff Circular, No. 16-A."²¹

¹⁹ See Note 11, *supra*.

²⁰ Rule 28, Tariff Circular 16-A.

²¹ Rule 27, Tariff Circular 16-A.

¶ J. RATES TO OR FROM NEW OFFICES.

An express company may establish, in the first instance, rates to or from newly opened offices of such company upon one day's notice to the Commission and the public. Statutory notice will be required as to all changes in, or additions to, the rates so filed in the first instance. Such tariffs must bear notation that they apply to newly opened offices to or from which no rates are in effect, and bear the notation: "Issued by authority of Rule 29, Interstate Commerce Commission's Tariff Circular, No. 16-A."²²

¶ K. RATES ON CARLOAD SHIPMENTS BETWEEN POINTS AS TO WHICH NO CARLOAD RATES ARE IN EFFECT.

Express companies may establish upon one day's notice to the Commission, and to the public, tariffs or supplements naming rates for carload shipments between points as to which no carload rates are in effect via their lines. Each tariff or supplement containing rates established under this permission must bear notation: "Issued by authority of Rule 30, Interstate Commerce Commission's Tariff Circular, No. 16-A."²³

§ 520. Rules and Regulations affecting Rates.

In all cases where a charge in addition to tariff rate is made for icing, lighterage, or switching, the express company shall either include such charge in the tariff or refer therein to I. C. C. number of tariff wherein such additional charge will be found.²⁴

§ 521. Different Kinds of Express Tariffs defined.

¶ A. LOCAL TARIFFS.

Local tariffs apply only to traffic between points on the lines of the issuing express company.

¶ B. JOINT TARIFFS.

Joint tariffs are those which contain or are made up from

²² See note 11, *supra*.

²³ Rule 30, Tariff Circular 16-A.

²⁴ Rule 10, Tariff Circular 16-A.

rates that extend over the lines of two or more carriers and that are made by agreement between such carriers.²⁵

§ 522. Tariffs must be printed.

All tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph, or other printing-press process may be used. Tariff schedules with the body of the tariff printed, as above provided, with the rates filled in with typewriter or ink, may be used for filing and posting.²⁶

§ 523. Form and Size of Express Tariffs.

All tariffs must be in book, sheet, or pamphlet form, and of size 9½ by 11½ inches.²⁷ Loose-leaf plan may be used; so that changes can be made by reprinting and inserting a single leaf; but if changes are so made, no other supplements to the same tariff may be issued.²⁸

§ 524. Information to be shown on Title-Page of Express Tariffs.

The Commission has ruled that the title-page of every express tariff shall show the following information:

¶ A. NAME OF EXPRESS COMPANY.

Name of issuing express company, express companies, or agent.²⁹

¶ B. I. C. C. NUMBER AND CANCELLATIONS.

I. C. C. number of tariff in bold type on upper right-hand corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs and supplements canceled thereby. If, however, the number of canceled tariffs is so large as to render it impracticable to thus enter them on title-page, they must be shown on following page; but specific reference to such list must be entered on title-page immediately under the number of the tariff. Serial numbers of express compa-

²⁵ Express Tariff Circular 16-A.

²⁶ Rule 1, Tariff Circular 16-A.

²⁷ Rule 2, Tariff Circular 16-A.

²⁸ Ibid.

²⁹ Rule 3, Tariff Circular 16-A.

nies may, if desired, be entered below the upper marginal line of title-page.³⁰

¶ C. KIND OF TARIFF.

Whether tariff is local or joint or a combination of same.³¹

¶ D. TERRITORY.

Whether merchandise, commodity, or a combination of both, and the territory or points from and to which the tariff applies, briefly stated.³²

¶ E. REFERENCE TO GOVERNING CLASSIFICATION AND EXCEPTION SHEETS.

Reference by name and I. C. C. number to the classification and exception sheets governing the tariff. Following form may be used: "Governed by the classification, I. C. C. No. . . . and exceptions thereto I. C. C. No. . . . , and supplements thereto and reissues thereof."³³

¶ F. DATES.

Date of issue and date effective. Any tariff may be changed upon statutory notice of thirty days, or, under special permission from the Commission, upon shorter notice.³⁴

¶ G. EXPIRATION NOTICE.

A provision in a tariff that the same, or any part thereof, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in

³⁰ Rule 3, Tariff Circular 16-A.

³¹ Rule 3, Tariff Circular 16-A.

³² Ibid.

³³ Ibid.

³⁴ Ibid.

lawful way. On such tariffs the term "Expires, unless sooner canceled, changed, or extended," must be used.³⁵

¶ H. STATUTORY NOTICE OR AUTHORITY FOR SHORTER NOTICE MUST BE SHOWN.

The Act to Regulate Commerce requires that all changes in rates or in rules that affect rates, shall be filed with the Commission at least thirty days before the date upon which they are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title-page of every tariff must show full thirty days' notice, or must bear a plain notation of the number and date of the permission, or the rule, or the decision of the Commission under which it is effective on less than statutory notice.³⁶

On every tariff or supplement that is issued on less than thirty days' notice by permission or order or regulation of the Commission, notation is required that it is issued under special permission or order "of the Interstate Commerce Commission, No. . . . of [date], or by authority of Rule, Tariff Circular [give current number]"³⁷

¶ I. NOTICE OF SUPPLEMENTS.

On the upper left-hand corner the words: "Only two supplements to this tariff may be in force at any time."³⁸

¶ J. OFFICER ISSUING.

Name, title, and address of officer by whom tariff is issued.³⁹

§ 525. Information that Express Tariffs shall contain.

The Commission has ruled that express tariffs in book or pamphlet form shall contain the following information, and in the order named:

³⁵ Rule 3, Tariff Circular 16-A.

³⁶ See note 3, *supra*.

³⁷ See note 29, *supra*.

³⁸ *Ibid*.

³⁹ *Ibid*.

¶ A. TABLE OF CONTENTS.

Table of contents, full and complete. Except that when tariff contains so small a volume of matter that its title-page or its arrangement plainly discloses its contents the table of contents may be omitted.⁴⁰

¶ B. PARTICIPATING EXPRESS COMPANIES OR CARRIERS.

Names of issuing express companies, including those for which joint agent issues under power of attorney, and names of carriers amenable to Act to Regulate Commerce participating under concurrence, both alphabetically arranged.⁴¹

¶ C. SHOW CONCURRENCE NUMBERS.

The form and number of power of attorney or concurrence by which each carrier is made party to the tariff must be shown.⁴²

¶ D. TARIFF MUST CONTAIN ALL RATES ON COMMODITIES INCLUDED IN TARIFF AND BETWEEN SAME POINTS.

A tariff on a single commodity, or a few commodities, shall contain all of that express company's commodity rates on such commodity or commodities applying from any point of origin named in the tariff to any point of destination named in the tariff.⁴³

¶ E. INDEX OF OFFICES.

Unless alphabetically arranged, a complete index of offices from which the tariff applies and an alphabetically arranged and complete index of offices to which the tariff applies, together with the names of States in which located.⁴⁴

¶ F. TERRITORIAL OR GROUP DESCRIPTIONS.

Traffic territorial or group descriptions may be used to designate points to or from which rates named in the tariff apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific

⁴⁰ Rule 4, Tariff Circular 16-A.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Ibid.

⁴⁴ Ibid.

reference is given to the I. C. C. number of the issue that contains such list. In this list the offices in each traffic territorial or group description shall be arranged alphabetically, or all of the offices in traffic territories or groups named in the tariff may be included in one alphabetical index, provided that points of origin and points of destination be shown separately, alphabetically, and the traffic territorial or group description in which they belong be shown opposite the several offices.⁴⁵

¶ G. REFERENCE MARKS AND ABBREVIATIONS.

Explanation of reference marks and technical abbreviations used in the tariff.⁴⁶

¶ H. LIST OF EXCEPTIONS.

List of exceptions, if any, to the classification governing the tariff which are not contained in exception sheets referred to on title-page.⁴⁷

¶ I. EXPLANATORY STATEMENTS.

Such explanatory statement in clear and explicit terms regarding the rates and rules contained in the tariff as may be necessary to remove all doubt as to their proper application.⁴⁸

¶ J. RULES GOVERNING THE TARIFF.

Rules and regulations which govern the tariff, the title of each rule or regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the rates named in the tariff shall be entered, except that a special rule applying to a particular rate shall be shown in connection with and on the same page with such rate.⁴⁹

¶ K. NO RULE SHALL AUTHORIZE SUBSTITUTING RATE FOUND IN ANY OTHER TARIFF.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any rate named in

⁴⁵ Rule 4, Tariff Circular 16-A.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ Ibid.

the tariff a rate found in any other tariff; but a scale of rates or a table of distance rates may be included in the tariff together with the provision, "If the use of the scale rate or the mileage rate on page . . . of this tariff makes a less charge on any shipment than rates named herein such lower charge will apply."⁵⁰

¶ L. TARIFF RULES AND REGULATIONS FILED AND POSTED MAY BE REFERRED TO IN OTHER SCHEDULES GOVERNED THEREBY.

An express company or an agent may publish, under I. C. C. number, post, and file a tariff publication containing the rules and regulations which are to govern certain rate schedules, and such publication may be made a part of such rate schedules by the specific reference "Governed by rules and regulations shown in I. C. C. No. . . ."⁵¹

A rate schedule may in like manner refer to another schedule for the governing rules and regulations.

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted.⁵²

¶ M. RATE TABLES.

The rates, explicitly stated, together with the names or designation of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated or ambiguous plans or terms must be avoided.⁵³

¶ N. ROUTES.

The different routes via which tariff applies may be shown, together with appropriate reference to application of rates. When a tariff specifies routing, the rates may not be applied via routes not specified. A tariff may show the routing ordinarily and customarily to be used, and may provide that, if from any cause shipments are sent via other junction points, but over the lines of parties to the tariff, the rates will apply.

⁵⁰ Rule 4, Tariff Circular 16-A.

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

§ 526. Basing Tariffs.

A basing rate tariff to be used in computing through rates between points between which no specific through rate applies may be constructed in sections, each section containing an alphabetical list of the offices and the basing rates for an individual State.⁵⁴

Contemporaneous with issuance of supplement to such tariff and effective on the same date, any section applying to an individual State may be reissued. Such reissues must bear the I. C. C. number of the tariff of which it is a part; the name of the State to which it applies; the cancellation of superseded section, specifying its date and the effective date of the new section; but supplement issued contemporaneously with such reissued section may not contain any changes affecting the State to which the reissued section applies. Reissued sections under this rule will not be counted as supplements under the rule limiting the number of supplements to any tariff. Such tariff shall contain an index of the effective dates of its several sections, and such index must be kept up to date either by reissue or in supplement to the tariff.⁵⁵

§ 527. Joint Basing Transfer Tariffs.

Express companies shall print, post, and file alphabetical lists of the offices reached by connecting concurring express companies, arranged by States, and designating the transfer points at which through business may be transferred, together with the rates from such transfer points to the destination offices via the lines of such connecting concurring companies. These lists shall be known as "Joint Basing Transfer Tariffs," and shall include the transfer points by which through rates may be figured, and shall provide that the lowest charge that can be computed therefrom via any transfer point named therein shall be the through charge from point of origin to destination applicable via any transfer point named therein.⁵⁶

⁵⁴ Rule 5, Tariff Circular 16-A.

⁵⁵ Ibid.

⁵⁶ Ibid.

**§ 528. Limiting Use of Terms "Missouri River Points,"
"General Specials," etc.**

The terms "Missouri River points," "Puget Sound points," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which rates named therein apply unless a full list of such points is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.

The term "general specials," or similar term, must not be used in any tariff for the purpose of indicating the articles to which the rates apply, unless a full list of the articles included in and covered by such term is printed in the tariff or specific reference is given to I. C. C. number of issue that contains such list.⁵⁷

§ 529. Commodity Rates must be Specific.

Commodity rates must be specific and must not be applied to analogous articles.⁵⁸

**§ 530. Commodity Rate the only Rate that can lawfully be
Used.**

In every instance where a commodity rate is named in a tariff upon a commodity and between specified points such commodity rate is the lawful rate and the only rate that can be used by the companies parties thereto, with relation to that traffic between those points, even though a merchandise rate or some combination may make lower. The naming of a commodity rate on any article or character of traffic takes such article or traffic entirely out of the classification and out of the merchandise rates between the points to which such commodity rate applies, and the commodity rate so named is not modified by the provisions in the classification for extra valuation charges, limitation of liability, icing charges, or any variation of the commodity rate, unless the commodity tariff provides that classification rules will govern.

Classification and class rate tariffs shall contain the provi-

⁵⁷ Rule 6, Tariff Circular 16-A.

⁵⁸ Ibid.

sion that wherever commodity rates are named they remove the application of the classification scale or class rates to the same commodity and between the same points.⁵⁹

§ 531. Rates for Mixed Shipments.

Rates may be made for specified mixed shipments and will be the lawful rates for such mixtures, even though certain parts of the mixtures are covered by merchandise or commodity rates when shipped separately.⁶⁰

§ 532. Cancellation of Tariffs or Parts thereof.

¶ A. TARIFF OR SUPPLEMENT TO TARIFF SHALL SPECIFY CANCELLATIONS.

If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portions of such other tariff which are thereby canceled, and such other tariff shall at the same time be correspondingly amended in the regular way. It will not be necessary to give on commodity tariff or supplement reference to merchandise rate tariffs that may be affected, nor to give on merchandise rate tariffs or supplements reference to commodity tariffs, except as otherwise provided.⁶¹

¶ B. CANCELLATION MUST BE BY AUTHORIZED AGENT OR BY EXPRESS COMPANY THAT ISSUED THE TARIFF CANCELED.

An agent who acts under power of attorney is fully authorized to act for the express companies that have named him their agent and attorney, and, therefore, it is permissible for him to cancel by his tariffs issues of such principals. A concurrence, however, does not confer authority upon either express company or agent to cancel tariffs of concurring express company and, therefore, tariffs issued under concurrences may not assume to cancel, or carry notation of cancellation of, tariffs of and issued by concurring express companies. Such

⁵⁹ Rule 7, Tariff Circular 16-A.

⁶⁰ Ibid.

⁶¹ Rule 8, Tariff Circular 16-A.

cancellations must be made by the express company that issued the tariff that is to be canceled.⁶²

¶ C. CANCELLATION NOTICES MUST BE BY SUPPLEMENT.

If a tariff is canceled with the purpose of canceling entirely the rates named therein, or when, through error or omission, a later issue failed to cancel the previous issue, and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels, even though such tariff may at the time have two effective supplements.⁶³

¶ D. CANCELLATION NOTICE SHALL SPECIFY WHERE RATES WILL THEREAFTER BE FOUND.

When a tariff or a commodity rate is canceled by supplement the cancellation notice must show where rate will thereafter be found, or what rate will thereafter apply. For example: "Rate in I. C. C. No. . . . will apply," or "Merchandise rates will apply," or "Combination rate will apply," or "No rates in effect."⁶⁴

If a tariff is canceled with the purpose of applying in lieu thereof the rates shown in some other tariff, the cancellation notice shall make a specific reference to the I. C. C. number of tariff in which such rates will thereafter be found. Cancellation of a tariff also cancels supplement to such tariff, if any in effect. If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff, as provided elsewhere.⁶⁵

§ 533. Amendments and Supplements to Tariffs.

¶ A. AMENDMENT AND SUPPLEMENT DEFINED AND FORM THEREOF.

A change in or addition to a tariff shall be known as an

⁶² Rule 8, Tariff Circular 16-A.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

amendment, and shall be issued in a supplement to the tariff and shall refer to the page or pages or item or items of the tariff which it amends.⁶⁶

¶ B. PARTICIPATING CARRIERS.

Supplement shall contain full list of participating carriers.⁶⁷

¶ C. SUPPLEMENT NUMBER AND CANCELLATIONS.

Supplements to a tariff shall be numbered consecutively as supplements to that tariff and not be given separate or new I. C. C. numbers. Each supplement shall specify the supplement or supplements which it cancels, and shall also show on title-page what supplements are in effect and that such effective supplements contain all changes. For example: "Supplement No. ... to I. C. C. No. ..." "Cancels Supplements Nos. ... and ..." "Supplements Nos. ... and ... are in effect and contain all changes." The term "cancels conflicting portions" must not be used.

An amended item must always be printed in supplements in its entirety as amended.⁶⁸

¶ D. SHOW EFFECTIVE DATE OF REISSUED ITEMS AND I. C. C. REFERENCE.

A tariff or a supplement which contains reissued items must not bear the notation, "effective at once, except as noted," but instead must bear the notation, "effective, except as noted in individual items." Example: "Issued Effective, except as noted in individual items." Reissued items must bear notation, "Effective [*date upon which item became effective*] in I. C. C. No.;" or "in Supplement No. ..., to I. C. C. No."⁶⁹

¶ E. NUMBER OF SUPPLEMENTS IN EFFECT AT ONE TIME.

There shall at no time be more than two supplements in effect to any tariff.⁷⁰

⁶⁶ Rule 9, Tariff Circular 16-A.

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

¶ F. AMOUNT OF MATTER SUPPLEMENT MAY CONTAIN.

When the effective supplements to a tariff have in the aggregate attained the proportions of twenty-five (25) percent of the pages in the original tariff, with a minimum of two pages, it may be reissued before further amendments may be made.⁷¹

§ 534. Index of Express Tariffs.

¶ A. EXPRESS COMPANIES MUST PUBLISH COMPLETE INDEX OF THEIR TARIFFS.

Each express company shall publish under proper I. C. C. number, post, and file a complete index of tariffs which are in effect and to which it is a party.⁷²

¶ B. ARRANGEMENT OF INDEX.

Such index shall be prepared in sections as follows and shall show: (a) I. C. C. number; (b) express company's own number; (c) index number; (d) initials of issuing express company or agent; (e) issuing express company or agent's number; (f) character of tariff or description of the articles upon which it applies; (g) where tariff applies from; (h) where tariff applies to.⁷³

NOTE.—Items (b), (c), and (e) may be omitted. Items (f), (g), and (h) will be stated in concise general terms.

First section. A list of all the tariffs as to which the express company is an initial carrier. Commodity tariffs to be entered alphabetically under names of commodities or principal commodities. Tariffs applying to different groups of the same commodity must be grouped together; e. g., "Fruits," etc.⁷⁴

Following the specific commodity tariffs will be entered the general commodity tariffs and the merchandise tariffs. Under each of these heads the application of the tariffs will be described by alphabetical arrangement of the points or territory from or to which they apply, in either the "From"

⁷¹ Rule 9, Tariff Circular 16-A.

⁷² Rule 11, Tariff Circular 16-A.

⁷³ Ibid.

⁷⁴ Ibid.

or "To" or "Between" column. Tariffs applying between a certain office and other offices will be listed in alphabetical order of offices for which constructed.⁷⁵

Second section. List of all tariffs of other express companies to which the express company is a party, arranged under commodities or merchandise as prescribed in the first section.⁷⁶

¶ C. NOTATION ON TITLE-PAGE.

Each index must bear on its title page the notation "This index contains lists of tariff publications in effect on [*date of issue of the index*]."

Each supplement to index must bear on title page the notation "This supplement contains corrections to and as in effect on [*date of issue of the supplement*]."

The title page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notations above, and must not bear any effective date. The rule requiring thirty days' notice does not apply to these indices and their supplements.⁷⁷

¶ D. REVISION AND SUPPLEMENTS.

If the express company so desires, lists of its division sheets, official circulars, etc., may appear in this publication. Supplements need not be included in indices.

If any changes are made, this index shall be corrected to date and be reissued each month, or supplement may be issued each month showing all changes and also what tariff, if any, shown in index is canceled or superseded by one shown in supplement, and index be reissued every six months. If supplements are used, they must be constructed in accord with specifications as to construction of index, excepting the "Additions" to and "Eliminations" from the index will be arranged under those respective heads; and each supplement must cancel preceding supplement and bring forward all changes.⁷⁸

⁷⁵ Rule 9, Tariff Circular 16-A.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

§ 535. Tariffs to or from Season or Summer Offices.

Tariffs or rates applying to or from offices at which business is transacted only during certain portions of the year, or tariffs applying over water routes during season of navigation only, shall remain in force until changed in the manner provided by these regulations, and it will not be necessary to refile with the Commission the rates in force to or from such office or over such route, temporarily closed, when it is reopened. Three days' previous notice of the opening and closing of any summer or season office or water route must be filed with the Commission and duly posted, in supplement to the tariff. All offices where rates are temporarily in effect shall be designated in tariffs as "summer" or "season" offices.⁷⁹

§ 536. All State or other Rates used for Interstate Shipments must be Posted and Filed.

Rates for through shipments are often made by adding together two or more rates. All State or other rates used in combination for interstate shipments must be posted at offices and filed with the Commission, and can only be changed as to such traffic in accordance with the terms of the Act.⁸⁰

§ 537. All Local Tariffs should have I. C. C. Numbers and be Posted and Filed.

The Commission believes it proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in manner prescribed in the Act.⁸⁰

§ 538. Receipt by and Filing of Tariffs with Commission does not Relieve Express Companies from Liability for Violation of Act or Regulations thereunder.

The law affirmatively imposes upon each express company the duty of filing with the Commission all of its tariffs and amendments thereto, as prescribed in the law or in any rule

⁷⁹ Rule 12, Tariff Circular 16-A.

⁸⁰ See note 1, supra.

relative thereto which may be announced by the Commission, under penalty for failure so to do, or for using any rate which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff, or supplement to a tariff, is in the files of the Commission, will not serve or operate to excuse the express company from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.⁸¹

§ 539. Rejected Schedules.

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication that is issued in lieu of such rejected schedule "In lieu of rejected by Commission," nor should the I. C. C. number or supplement number which it bears be again used.⁸²

§ 540. Rates Prescribed in Commission's Decisions must be Promulgated in Tariffs.

Rates prescribed by the Commission in its decisions and orders after hearings upon formal complaints and accepted by defendants or affirmed by a Court shall, in every instance, be promulgated by the express companies against which such orders are entered, in duly published, filed, and posted tariffs, or supplements to tariffs.

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five days' notice to the Commission and to the public, and if made effective on less than statutory notice, either under this rule or under special authority granted in the order of the case,

⁸¹ See note 3, supra.

⁸² Ibid.

shall bear on its title page notation "In compliance with order of Interstate Commerce Commission in case No."⁸³

§ 541. Circulars announcing Compliance with Orders of Court.

Circulars announcing or explaining the attitude and course of express companies under injunction of a Court, relating to tariff rates or regulations, must not be issued as supplements to tariffs nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission will, however, be pleased to have copies of such circulars and the information therein contained.⁸⁴

§ 542. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.

Each express company files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received which does not bear I. C. C. number next in numerical order to that borne by the one last filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. Request is made that in so far as is possible express companies will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.⁸⁵

§ 543. Agents Authorized to issue Tariffs, Classifications, Exception Sheets and Supplements thereto.

¶ A. NOTICE OF AUTHORIZATION OR ACCEPTANCE MUST BE FILED.

If an express company authorizes an agent to file its tariffs

⁸³ See note 3, *supra*.

⁸⁴ *Ibid*.

⁸⁵ *Ibid*.

or classifications and exception sheets and supplements thereto, or certain of them, official notice of such authorization and of acceptance of responsibility by the express company for his acts, in form as hereinafter specified, must be filed with the Commission.⁸⁶

¶ B. FORM OF APPOINTMENT OF AGENT TO FILE TARIFFS, CLASSIFICATIONS, AND EXCEPTION SHEETS AND SUPPLEMENTS THERETO.

The following form, on paper 8 by 10½ inches in size, will be used in giving authority to an agent to file for the express company giving the authority tariffs and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.⁸⁷

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of express company in full.*]

[*Date*],

Form EX1—No. ...

Know all men by these presents:

That the [*name of express company*] has made, constituted, and appointed, and by these presents does make, constitute, and appoint [*name of person appointed*] its true and lawful attorney and agent for the said company and in its name, place and stead to file tariffs, classifications, and exception sheets and supplements thereto, as required of common carriers by the Act to Regulate Commerce and by regulations established by the Interstate Commerce Commission thereunder for the period of time, the traffic, and the territory now herein named:

.....
.....

And the said [*name of express company*] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully to all intents and purposes as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof, and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its president and to be duly attested under its corporate seal by its secretary, at ..., in the State of

⁸⁶ See note 1, *supra*.

⁸⁷ Rule 16, Tariff Circular 16-A.

on this day of, in the year of our Lord nineteen hundred and

The [name of express company.]

By
Its President.

Attest:

....
Secretary.

[Corporate Seal.]

*Original Form to be Filed with Commission and Duplicate
Furnished Agent.*

The express company issuing this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given.⁸⁸

¶ C. AUTHORIZATIONS FOR AGENT AND CONCURRENCES IN HIS
TARIFFS MUST BE ON FILE.

If two or more express companies appoint the same person as agent for the filing of tariffs or classifications and supplements thereto, each of them will be required to file with the Commission power of attorney in form prescribed appointing him their agent; and the concurrence of every other carrier amenable to the Act to Regulate Commerce, participating in any tariff or classification or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.⁸⁹

¶ D. AUTHORITY TO AGENT MAY BE REVOKED OR TRANSFERRED.

Authority given as stated above may be revoked by an express company upon thirty days' official notice to the Commission, or at any time may be transferred to another agent by filing with the Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.⁹⁰

¶ E. JOINT AGENT WILL USE HIS OWN I. C. C. SERIAL NUMBER.

Such joint agent duly authorized to act for several express companies must file joint tariffs, or classifications, or exception sheets under I. C. C. serial numbers of his own.⁹¹

⁸⁸ Rule 16, Tariff Circular 16-A.

⁸⁹ See note 1, supra.

⁹⁰ Ibid.

⁹¹ Ibid.

¶ F. TARIFFS ISSUED BY AN EXPRESS COMPANY UNDER CONCURRENCES WILL BE FILED BY IT FOR ALL CONCURRING.

Tariffs issued by an express company under its I. C. C. numbers may include, under proper concurrences, shown therein, rates via to and from points on other express companies' lines and concurring express companies may use such tariffs for posting at their offices. Such tariffs must be filed by the issuing express company and such filing will constitute filing for all lawfully concurring carriers.⁹²

¶ G. SEND COPIES OF JOINT PUBLICATION TO EVERY PARTICIPANT THEREIN.

The agent or express company that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.⁹³

¶ H. EXPRESS COMPANY MUST NOT PUBLISH RATES CONFLICTING WITH OR DUPLICATING RATES PUBLISHED BY ITS AGENT.

An express company that grants authority to an agent or to another express company to publish and file certain of its rates must not in its own publications publish rates that duplicate or conflict with those which are published by such authorized agent or other express company.⁹⁴

¶ I. EXPRESS COMPANY MAY GRANT AUTHORITY TO JOINT AGENT TO PUBLISH CLASSIFICATIONS, EXCEPTION SHEETS AND SUPPLEMENTS THERETO.

An express company may grant to a joint agent authority to publish and file for it classifications and supplements thereto and exceptions to the classifications; or, such exceptions may be published by the express company in its own issues, either as part of individual tariffs or in a publication that is given an I. C. C. number, that is filed and posted as required, and that is devoted to such exceptions. Such exceptions and changes therein may be made only on statutory notice or under special permission for shorter time.

⁹² Rule 16, Tariff Circular 16-A.

⁹³ Ibid.

⁹⁴ Ibid.

In so far as is reasonably practicable, exceptions should be included in the tariff which they affect.⁹⁵

¶ J. I. C. C. NUMBER OF CLASSIFICATION.

A joint agent to whom express companies have extended authority under power of attorney to publish and file classifications and supplements thereto must issue them under his own I. C. C. numbers.⁹⁶

¶ K. LIST OF PARTICIPATING EXPRESS COMPANIES.

The agent must show in the classification a list of the express companies for which he acts under power of attorney, giving as to each the EX1⁹⁷ number of such authority.

A full list of participating express companies shall be shown in supplements.⁹⁸

¶ L. FILING CLASSIFICATION ISSUED BY JOINT AGENT.

Such agent must file the classification and supplements thereto on behalf of all of the express companies that have so authorized him to act for them; and such express companies will not file for themselves the classification or supplements thereto.

The provisions of the law as to statutory notice must be observed in the issuance of supplements or reissue of the classifications.⁹⁹

¶ M. IF EXPRESS COMPANY DOES NOT AUTHORIZE AGENT TO FILE CLASSIFICATION, IT IS BOUND TO STATUTORY NOTICE.

If an express company fails to authorize an agent to file the classification for it and undertakes to file it for itself, it is bound by the terms of the law as to notice of change and date of filing, both as to the classification and each supplement thereto.¹⁰⁰

⁹⁵ Rule 15, Tariff Circular 16-A.

⁹⁶ Ibid.

⁹⁷ EX1, EX2, etc., refer to forms of concurrences, powers of attorney, etc., to be filed with the Commission as treated of at length in this chapter.

⁹⁸ See note 95, supra.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¶ N. POWER OF ATTORNEY.

In giving power of attorney to agent for purpose of issuing classification, the form EX1 may be modified by striking out the word "tariff," and, if desired, the words "and exception sheets."¹⁰¹

¶ O. CONCURRENCE.

If an express company has given another express company concurrence EX4, under which it concurs in the classification which that other express company or its agent may make and file, the express company to which that concurrence is given may exercise the authority by its lawfully appointed agent, and the express company which gave the authority be shown in the publication as participant under the form and number of its concurrence.¹⁰²

§ 544. Concurrence by Express Companies in Tariffs Issued and Filed by another Express Company or its Agent.

¶ A. SIZE OF PAPER.

All concurrences must be on paper 8 by 10½ inches in size.¹⁰³

¶ B. FORM OF CONCURRENCE IN A TARIFF THAT IS ISSUED AND FILED BY ANOTHER EXPRESS COMPANY OR ITS AGENT AND TO WHICH THE EXPRESS COMPANY GIVING CONCURRENCE IS A PARTY.

The following form will be used in giving concurrence in a tariff that is issued and filed by another express company or its agent and to which the express company giving concurrence is a party. If given to continue until revoked, it will serve as continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken

¹⁰¹ See note 95, supra.

¹⁰² Ibid.

¹⁰³ See note 87, supra.

out, a new concurrence will be required with each supplement or reissue.¹⁰⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date],

Form EX2—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of the rate schedule described below, together with supplements thereto and reissues thereof which the named issuing express company or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

Title and number: [Here give exact description of title of schedule, including number and name of series.]

Date of issue:

Date effective:

Issued by { [Official.]
 [Company.]

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Concurrence Accompanying Tariff.

This form will be filed with the Commission by the express company or agent who files the tariff and will accompany the tariff.¹⁰⁵

¶ C. FORM OF CONCURRENCE GIVEN BY AN EXPRESS COMPANY TO EMBRACE ALL TARIFFS ISSUED BY ANOTHER EXPRESS COMPANY OR ITS AGENT IN WHICH CONCURRING EXPRESS COMPANY IS SHOWN AS A PARTICIPATING INTERMEDIATE OR TERMINAL LINE.

Concurrence may be given by an express company to embrace all tariffs issued by another express company or its agent in which the concurring express company is shown as a participating intermediate or delivering line, after the following form:¹⁰⁶

¹⁰⁴ Rule 17, Tariff Circular 16-A.

¹⁰⁵ Ibid.

¹⁰⁶ Rule 18, Tariff Circular 16-A.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of express company in full.*]

[*Date*] . . . ,

Form EX3—No. . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of express company*] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [*name of express company*] or its agent may make and file, in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[*Name of express company.*]

By [*Name of officer.*]

[*Title of officer.*]

*Original Form to be Filed with the Commission and Duplicate
Furnished Express Company.*

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given. This form must not be qualified in any way except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.¹⁰⁷

¶ D. FORM OF CONCURRENCE GIVEN BY AN EXPRESS COMPANY
IN TARIFFS ISSUED BY ANOTHER EXPRESS COMPANY OR
ITS AGENT APPLYING RATES TO OR FROM ITS OFFICES OR
VIA ITS LINES ON CERTAIN DESCRIBED TRAFFIC OR BE-
TWEEN CERTAIN DESCRIBED POINTS OR TERRITORIES.

Concurrence may be given by an express company in tariffs issued by another express company or its agent applying rates to or from its offices or via its lines, on certain described traffic or between certain described points or territories, after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to publish and file rates to and from and via its lines, and not

¹⁰⁷ Rule 18, Tariff Circular 16-A.

otherwise qualified, express company will use concurrence form EX5 or EX7.¹⁰⁸

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date],

Form EX4—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [name of express company] or its agent may make and file, and in which this company is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon; or between and; or from to; or via; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with the Commission and Duplicate
Furnished Express Company.*

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given.¹⁰⁹

¶ E. FORM OF CONCURRENCE BY AN EXPRESS COMPANY IN TARIFFS ISSUED BY ANOTHER EXPRESS COMPANY OR ITS AGENT APPLYING RATES TO AND FROM ITS OFFICES AND VIA ITS LINES.

Concurrence may be given by an express company in tariffs issued by another express company or its agent applying to and from its offices and via its lines and after the following form:

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date],

Form EX5—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and

¹⁰⁸ Rule 19, Tariff Circular 16-A.

¹⁰⁹ Ibid.

concurs in the publication and filing of any rate schedule or supplement thereto which the [name of express company] or its agent may make and file, and in which this company is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying to and from offices on its lines, and via its lines, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express company to which this concurrence is given.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

*Original Form to be Filed with the Commission and Duplicate
Furnished Express Company.*

The express company issuing this form will file the original with the Commission and will furnish duplicate to the express company to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.¹¹⁰

¶ F. FORM OF CONCURRENCE GIVEN BY TWO OR MORE EXPRESS COMPANIES IN TARIFFS ISSUED BY THEIR JOINT AGENT.

If two or more express companies appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form EX1, concurrence in tariffs issued by him under such authority may be in the following form:¹¹¹

(A)

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date] ,

Form EX6—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [here give list of all express companies for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule

¹¹⁰ Rule 20, Tariff Circular 16-A.

¹¹¹ Rule 21, Tariff Circular 16-A.

contains rates applying via its line, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Filing.

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every express company represented by him.¹¹²

(B)

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date],

Form EX7—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [here give list of all express companies for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Filing.

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of attorney to receive for it concurrences, original will be filed with

¹¹² Rule 21, Tariff Circular 16-A.

the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every express company represented by him.¹¹³

¶ G. FORM OF CONCURRENCE GIVEN BY TWO OR MORE EXPRESS COMPANIES IN TARIFFS ISSUED BY THEIR JOINT AGENT APPLYING TO OR FROM CERTAIN POINTS OR TERRITORIES.

If two or more express companies appoint the same person as agent for the publication and filing of tariffs and supplements thereto under powers of attorney form EX1, concurrence in tariffs issued by him under such authority applying to or from certain points or territory may be issued in the following form, modified as may be necessary to confer exactly the authority intended to be granted.¹¹⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of express company in full.]

[Date]

Form EX8—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of express company] assents to and concurs in the publication and filing of any rate schedule or supplement thereto which the [here give list of all express companies for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating express company, and hereby makes itself a party to and bound thereby in so far as such schedule contains rates applying upon; or between and; or from to; or from to points on or reached via its line; or from points on or via its line to until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the express companies to which this concurrence is given, or of their agent and attorney herein named.

[Name of express company.]

By [Name of officer.]

[Title of officer.]

Filing.

The express company issuing this form will file the original with the Commission and will furnish duplicate to each of the express companies named in the concurrence, or, if each of those express companies has given said agent power of at-

¹¹³ Rule 22, Tariff Circular 16-A.

¹¹⁴ Ibid.

torney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every express company represented by him.

NOTE.—Concurrence, form EX2, applies to individual publication named therein. Concurrence, form EX3 or EX6, confers authority to publish and file rates to, but not from, offices on line of concurring express company, and via its lines. Concurrence, form EX5 or EX7, confers authority to publish and file rates to and from offices on line of concurring express company, and via its lines. Forms EX3, EX5, EX6, and EX7 are not to be modified except as specified in the rules. The use of these several forms as provided will therefore show by the form number just what authority has been given, except when form EX4 or EX8 is used, these forms being provided for instances which the other forms do not exactly fit.

¶ H. NUMBERS OF CONCURRENCES AND AUTHORIZATIONS.

Each express company will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from the I. C. C. numbers of tariffs.¹¹⁵

¶ I. PRINTING AND USE OF AUTHORIZATIONS AND CONCURRENCES.

It is suggested that for convenience in reference and filing, the powers of attorney and concurrences be printed in triplicate, consisting of a "stub," to be retained by issuing express company, an "original," to be furnished to the agent to whom power of attorney is given, or the express company to which concurrence is given.¹¹⁶

¶ J. REVOCATION EFFECTIVE.

Notice of revocation of a concurrence will become effective forty days from date upon which such notice is filed with the Commission and served upon the express company to which such concurrence was given.¹¹⁷

¶ K. CONFLICTING AUTHORITY TO BE AVOIDED.

In giving concurrences care must be taken to avoid proba-

¹¹⁵ Rule 24, Tariff Circular 16-A.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

bility of two or more agents or express companies naming conflicting rates or rules.¹¹⁸

¶ L. EXPRESS COMPANY ISSUING AUTHORITY OR CONCURRENCE IS NOT RELIEVED FROM DUTY OF POSTING TARIFFS.

The granting of authority to issue tariffs under power of attorney, or concurrence, does not relieve the express company, conferring the authority, from the necessity of complying with the law with regard to posting tariffs. It may use tariffs issued under its authority for that purpose.¹¹⁹

§ 545. Letter of Transmittal accompanying Tariffs Filed with the Commission.

All tariffs that are filed with the Commission will be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size, and to the following effect:¹²⁰

[Name of express company in full.]

[Date],

Advice No.

To the Interstate Commerce Commission,

Washington, D. C.:

Accompanying schedule is sent you for filing, in compliance with the requirements of the Act to Regulate Commerce, issued by Express Company, and bearing

I. C. C. No.

Supp. No. to I. C. C. No.

Effective, 191...;

and is concurred in by all express companies named therein as participants, under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named express companies, whose concurrences are attached hereto:

.....
.....

[Signature of filing agent.]

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can conveniently be entered.¹²¹

NOTE.—If receipt for accompanying schedule is desired, the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.¹²²

¹¹⁸ Rule 24, Tariff Circular 16-A.

¹¹⁹ Ibid.

¹²⁰ Rule 25, Tariff Circular 16-A.

¹²¹ Ibid.

¹²² Ibid.

§ 546. Withdrawal of Filed Tariffs not permitted.

See *Section 488, ante*.

§ 547. Tariffs covering Export and Import Traffic.

See *Section 506, ante*.

§ 548. Responsibility of Express Companies under Tariffs.

See *Section 490, ante*.

§ 549. Maxima Rates not Specific Rates.

See *Section 507, ante*.

CHAPTER XXXII.

PASSENGER FARES, TICKETS, AND SERVICES.

SECTION

- 550. Definitions.
- 551. Passenger Fares must be Just and Reasonable.
- 552. Legality of Higher Fare between Two Points in One Direction than in the Opposite Direction.
- 553. Through Tickets when no Joint Fares apply.
- 554. Through Fare higher than Sum of Locals Prima Facie Unreasonable.
- 555. Through Interstate Passenger Fare Higher than the Sum of Local State Fares.
- 556. Right of Passenger to use Two Local State Fares instead of the Published Through Rate on Interstate Journey.
- 557. Combination of Joint Fare to Common Point and Local Fare Beyond.
- 558. Canadian Fares.
- 559. Through Passenger Fares from Points in the United States to Foreign Countries.
- 560. Requirement that Passenger shall purchase Ticket.
- 561. Baggage of Passengers.
- 562. Mileage, Excursion and Commutation Passenger Tickets.
- 563. Party-Rate Tickets.
- 564. Joint Interchangeable Five-Thousand-Mile Tickets.
- 565. Round-Trip Tickets on Certificate Plan.
- 566. Chartering Trains.
- 567. Charges for Moving Private Cars.
- 568. Validation of Round-Trip Passenger Tickets.
- 564. Failure to validate Passenger Tickets.
- 570. Stop-overs and Extensions of Time on Limited Tickets.
- 571. Limitation of Time in Passenger Tickets.
- 572. No Refund to Passenger who exceeds Stop-over Limit.
- 573. The Use of Pullman Cars at Stop-over Points cannot be Limited to Members of a Particular Club.
- 574. Redemption of Unused Passenger Tickets.
- 575. Refund of Unused Portion of Round-Trip Ticket.
- 576. Passenger Ticket honored by Wrong Line.
- 577. Tickets for Transportation and Meals, Hotel Accommodations, etc.
- 578. Entertainment provided, or Contribution made by a Carrier.

SECTION

579. Established Passenger Fares must be observed.
580. Carrier may employ Person to work up Excursion Travel.
581. Error by Carrier's Agent causing Passenger to pay Additional and Unnecessary Charges.
582. Nontransferable Passenger Tickets.
583. Publication of Passenger Fares.
584. Published Fares must not be deviated from.
585. Discrimination in Fares for Transportation of Passengers.
586. Jurisdiction of Interstate Commerce Commission over Passenger Fares and Tickets.
587. Tickets purchased at the Regular published Fare may be Given by a Land Company to Prospective Purchasers.
588. A Carrier must publish Fares and offer to the Public Railroad Tickets Independent of Omnibus Arrangements.
589. Sale of Tickets after Departure of Last Train on Final Selling Date.

§ 550. Definitions.

The term "joint fare" is construed to mean a fare that extends over the lines of two or more carriers and that is made by joint arrangement or agreement between such carriers.¹

§ 551. Passenger Fares must be Just and Reasonable.

The Act to Regulate Commerce provides that all charges made for any service rendered or to be rendered in the transportation of passengers or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.²

§ 552. Legality of Higher Fare between Two Points in One Direction than in the Opposite Direction.

It is not a violation of law to charge more in one direction on certain trains than is charged in the other direction on all trains between the same points.³ The two rates have no necessary connection or relation, and the fact that a rate over a

¹ Tariff Circular 17-A.

² Act to Regulate Commerce. Section 1.

³ *Hewins v. N. Y. N. H. & H. Rd. Co.* (1904), 10 I. C. C. R. 221, citing *MacLoon v. B. & M. R. R. Co. et al.* (1903), 9 I. C. C. R. 642, and *Duncan v. A. T. & S. F. Ry. Co. et al.* (1893), 3 I. C. R. 256; 4 I. C. R. 385, 6 I. C. C. R. 85.

road or line in one direction is materially higher than the rate on the same class of traffic over the same road or line and between the same points in the opposite direction does not, as in case of hauls over the same line, in the same direction, establish *prima facie* the unreasonableness of the higher rate.⁴

§ 553. Through Tickets when no Joint Fares apply.

A carrier may apply to through tickets, fares to or from stations to or from which no joint fare is published by using lawfully published bases, locals, or proportionals in connection with other lawfully published tariffs.⁵

§ 554. Through Fare higher than Sum of Locals Prima Facie Unreasonable.

The Commission has issued the following ruling:⁶

“Many informal complaints are received in connection with regularly established through fares which are in excess of the sum of the locals between the same points. The Commission has no authority to change or fix a fare except after full hearing upon formal complaint. It is believed to be proper for the Commission to say that if called upon to formally pass upon a case of this nature it would be its policy to consider the through fare which is higher than the sum of the locals between the same points as *prima facie* unreasonable and that the burden of proof would be upon the carrier to defend such higher through fare.”

§ 555. Through Interstate Passenger Fare Higher than the Sum of Local State Fares.

While under ordinary circumstances the through interstate passenger fare should not exceed the sum of the local State fares, there is no requirement of the Act to Regulate Commerce to this effect.⁷

⁴ MacLoon v. B. & M. R. R. Co. et al. (1903), 9 I. C. C. R. 642, citing Duncan v. A. T. & S. F. Ry. Co. et al. (1893), 3 I. C. R. 256, 4 I. C. R. 385, 6 I. C. C. R. 85.

⁵ Rule 36, Tariff Circular 15-A.

⁶ Rule 56, Tariff Circular 17-A.

⁷ Artz v. Seaboard Air Line Ry. (1905), 11 I. C. C. R. 458, citing

Where an interstate passenger fare which is in excess of the local State fares is alleged to be unreasonable, the presumption is that the fares established by State authority are reasonable, and the burden of proof to show the contrary is on the railroad company.⁸

§ 556. Right of Passenger to use Two Local State Fares instead of the Published Through Rate on Interstate Journey.

It is certainly true that if a railroad company publish a joint through rate between two points they cannot contract to transport the passenger between those points for a less sum than the published schedule.⁹ However it may well happen that the use of two local State rates may yield a lower charge than the published through interstate rate; and the Commission has held that such local rates may, under the present law, be properly used. In deciding the case of *Kurtz v. Pennsylvania Co. et al.*,¹⁰ the Commission said:

“Let us assume that the through rate from Charleston to Savannah established by the Atlantic Coast Line was \$6, while the rate from Charleston to the State line was \$3, and from the State line to Savannah \$2. It is apparent that if a passenger applied to the railroad company at Charleston for a ticket to Savannah, that company must sell him a through ticket for \$6, and would have no right to sell two local tickets for \$5; for that would be an evasion of its published tariff rates. Upon the other hand, this Commission has stated in its administrative rulings, and now repeats, that the passenger may properly pay his fare from Charleston to the State line and again from the State line to Savannah, although he there-
Railroad & Warehouse Commissioners v. Eureka Springs Ry. Co., 7 I. C. C. R. 69; Savannah Bureau of Freight & Transp. v. Charleston & S. Ry. Co., 7 I. C. C. R. 601.

⁸ Brabham et al. v. A. C. L. Rd. Co. (1905), 11 I. C. C. R. 464, citing Railroad & W. Comms. v. Eureka Springs Ry. Co., 7 I. C. C. R. 69; Savannah Bureau of Freight & Transp. v. C. & S. Ry. Co., 7 I. C. C. R. 601; Artz v. S. A. L. Ry., 11 I. C. C. R. 458.

⁹ Kurtz v. Pa. Co. et al. (1909), 16 I. C. C. R. 410.

¹⁰ Ibid.

by obtains through transportation between these points for less than the published through rate, and although he does so, knowing that he is to go from Charleston to Savannah, and deliberately seeking this means of obtaining transportation at less than the through rate.

“The reason for this is that not the intent of the parties but the actual transaction must be regarded, as was held by the United States Supreme Court in *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*,¹¹ involving the transportation of a carload of grain from a point in North Dakota to a point in Texas, at a rate from the point of origin to Texarkana and a rate from Texarkana to destination, which, when combined, were less than the through rate. The Charleston & Savannah Railroad Co. sells to all the world tickets from Charleston to the State line for \$3, and again from the State line to Savannah for \$2. A passenger may purchase his ticket to the State line, and when he arrives there that contract of transportation is at an end. He now purchases another ticket from the State line to Savannah and a new contract of transportation begins. If the regulations of the railroad company permit it, he may, instead of purchasing a ticket, pay his cash fare upon the train, to the same effect. He has, indeed, secured through transportation for less than the through rate; but he has done so by putting together two local transportations at the local rates.

“Congress might undoubtedly say that this shall not be done, but up to the present time has not so declared.”

§ 557. Combination of Joint Fare to Common Point and Local Fare Beyond.

¶ A. COMBINATION OF JOINT THROUGH AND LOCAL FARES.

In order to secure uniformity in practice and understandings and to remove the cause of many complaints, the Commission decides that when a joint through fare is the same to two or more points and fare on through passenger to local

¹¹ *Gulf, Colorado & Santa Fe Ry. Co. v. Texas*, 204 U. S. 403, 51 L. ed. 540, 27 Sup. Ct. 360.

station to which no specific joint through fare applies is made up by combination of such joint through fare to common points and local fare beyond, the fare for through passenger must be determined by calculating the joint through fare to the point from which the lower local fare applies to point of destination and adding thereto such local fare. For example: Joint through tariff names the same fares from certain eastern points to Chicago and Milwaukee. If passenger is destined to a point to which the local fare is less from Milwaukee than from Chicago, the fare applied should be the joint through fare to Milwaukee plus the local fare from Milwaukee to destination, and unless the lines of delivering carrier reach both Chicago and Milwaukee the passenger should move via Milwaukee. If the local fare from Chicago to point of destination is lower than from Milwaukee, the fare should be the joint through fare to Chicago plus the local fare from Chicago to destination, and unless the lines of delivering carrier reach both Milwaukee and Chicago the passenger should move via Chicago.¹²

¶ B. FARES MUST BE THOSE IN EFFECT OVER ROUTES BY WHICH
PASSENGER MOVES.

Fares for outbound through movements from such local stations and under like circumstances must be applied on the same basis where the joint through fares are the same from two or more points. This does not authorize any carrier to apply to transportation over its lines any fare except those stated in its own lawfully published tariffs or in the lawfully published joint tariffs in which it has concurred. If a carrier desires to "meet the rate" of a competitor, it must do so by lawfully including in its own tariffs such specific fares, proportional or otherwise, as may be necessary so to do.¹³

§ 558. Canadian Fares.

A Canadian carrier having joint through fares from a point in the United States to points on its own line may not depart from those fares by the device of placing an agent at such

¹² Rule 215, Con. Rul. Bul. No. 4 (March 18, 1907).

¹³ Ibid.

point in the United States with authority to sell tickets from the first station on its line north of the Canadian boundary to other points on its line in Canada at the rate of one cent a mile, "to be sold only to such persons as produce a certificate of the immigration agent of the Canadian Government." Besides being a device, tickets so limited to particular persons operate as a discrimination. But in the absence of such joint through fares from a point in the United States to points on its own lines this Commission has no jurisdiction over the fares actually charged and collected for the separate transportation between points in Canada.¹⁴

§ 559. Through Passenger Fares from Points in the United States to Foreign Countries.

Where a carrier publishes through passenger fares to or from a foreign country, if the inland portion of such fares is different from the carrier's domestic fares, and if such inland proportionals are offered only in connection with travel to or from such foreign country, it is entirely proper and necessary that the inland carrier shall require evidence of the steamer passage having been paid for before granting to any person its inland proportional fare which its tariff offers in connection with such journey; and to note on separate tickets that may be issued for the inland and the ocean portions of such trip cross references to the other portions of such tickets, and to require satisfactory evidence to be presented to the conductor in order to make valid such inland proportional tickets.¹⁵

§ 560. Requirement that Passenger shall purchase Ticket.

When a railroad company makes a reduction from regular passenger fares which are not found unreasonable, it may lawfully require that a person desiring to avail himself of such reduction shall purchase a ticket, and that all persons not holding such special reduction rate ticket shall pay the reasonable ordinary fare.¹⁶

¹⁴ Rule 24, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

¹⁵ Rule 71, Tariff Circular 17-A.

¹⁶ *Cist v. M. C. Rd. Co.* (1904), 10 I. C. C. R. 217.

Where a railroad company published on its public tariff schedules filed and posted as required by the Act to Regulate Commerce, that the conductor should collect fare on trains from passengers without tickets by adding 25 cents to single-trip rates. *Held*, That it was not unjust discrimination against the complainant to exact this addition from him.¹⁷

§ 561. Baggage of Passengers.

¶ A. DUTY OF CARRIERS TO PRESCRIBE REASONABLE REGULATIONS GOVERNING BAGGAGE.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) makes it the duty of all common carriers subject to its provisions to establish, observe and enforce just and reasonable regulations and practices affecting the carrying of personal, sample and excess baggage.

¶ B. DISCRIMINATION IN HANDLING BAGGAGE.

In the case of *Herbeck-Demer Co. v. B. & O. Rd. Co. et al.*,¹⁸ the complainant urged that most passengers travel with only such baggage as they take into the car with them; that when a railroad charges the same amount for carrying a passenger without baggage and a passenger and his trunk weighing 150 pounds, it has performed a greater service for the second person than for the first and has therefore discriminated in favor of that passenger. The Commission held that it is certainly true that the service performed by the railway for the passenger with the trunk is greater than that performed for the passenger without baggage and that so is the service performed in transporting a passenger who weighs 300 pounds greater than that performed in carrying one who weighs but 100 pounds. That the Act to Regulate Commerce does not forbid all discrimination, but only that which is *undue*, and that such discrimination as may be involved in the carrying

¹⁷ *Sidman v. R. & D. Rd. Co.* (1890), 3 I. C. C. R. 512; 2 I. C. R. 766.

¹⁸ *Herbeck-Demer Co. v. B. & O. R. Co. et al.* (1909), 17 I. C. C. R. 88.

of the personal baggage of a passenger without extra charge is not undue and therefore that the practice is not unlawful. That a railroad company may properly carry for one charge the passenger and his personal baggage; and that it may, for its own convenience and for the convenience of the traveling public, provide a separate car for the transportation of the baggage, and that it may limit the amount of baggage to be carried free and make a charge for the excess.

§ 562. Mileage, Excursion and Commutation Passenger Tickets.

¶ A. NATURE OF SUCH TICKETS.

The **mileage ticket** is one form of a reduced rate ticket which had a well-understood meaning before the passage of the Act to Regulate Commerce.¹⁹ The most usual form of mileage tickets is the one-thousand-mile ticket; but the custom has been to issue them in other and various forms, and they may be issued for any number of miles.²⁰ One coupon is detached by the conductor for each mile traveled, and fractions of a mile are computed as a mile. The distances are based upon mileage tables issued by the carrier.

Commutation tickets are commonly understood to be tickets sold for a gross sum at reduced rates for a number of rides between points.²¹ The Federal Court has defined a commutation ticket to be a ticket for one passenger, good for more than one ride, or more than one passenger for one ride, sold at a reduced rate.^{21a} The granting of commutation rates for suburban travel is quite general, and such rates are defensible on various grounds. They tend to benefit the public by permitting and inducing residence at considerable distance from the place of occupation, thus aiding the territorial growth of cities and relieving their congested districts. So far as

¹⁹ Third Annual Report of I. C. C. (1889).

²⁰ *Larrison v. C. & G. T. R. R. Co.* (1887), 1 I. C. R. 309; 1 I. C. R. 147.

²¹ See note 19, *supra*.

^{21a} See note 36, *infra*.

they have that effect, such rates in turn benefit the railways by securing business that otherwise would not exist and revenue not otherwise obtainable. Ordinarily, the price of commutation tickets, the conditions upon which they are sold, and the distance from a given city to which commutation rates shall be extended, are matters within the discretion of the carrier.²²

Excursion tickets, ordinarily, are understood to be round-trip tickets sold at reduced rates issued for one trip and on special occasions, sometimes for health or recreation, and sometimes for army or industrial reunions and assemblages for political, religious, or benevolent purposes.²³

¶ B. LEGALITY OF SUCH TRANSPORTATION.

The Act to Regulate Commerce permits the issuance by carriers of mileage, excursion and commutation passenger tickets.²⁴ The provision of the statute referred to, authorizes special rates to commuters which are less *per mile* than the charges to other passengers for longer distances. Such a regulation of rates must exist under any system of commutation. The most remote point within a commutation district secures lower rates per mile than the next and more distant point without that district, but the discrimination thus created is not unjust, nor are places outside of the commutation territory thereby subjected to undue prejudice.²⁵

¶ C. ISSUANCE OF MILEAGE, EXCURSION AND COMMUTATION TICKETS OPTIONAL WITH CARRIER.

Under the Act, as stated above, carriers are allowed to issue mileage, excursion and commutation tickets, but ordinarily they cannot be compelled to do so. The permission does not create an obligation. To the extent necessary for their use, tickets of the description named are exempt from the general

²² Sprigg et al. v. B. & O. Rd. Co. et al. (1900), 8 I. C. C. R. 443; affirmed in Field v. Southern Ry. Co. (1908), 13 I. C. C. R. 298.

²³ See note 19, *supra*.

²⁴ Act to Regulate Commerce. Section 22.

²⁵ See note 22, *supra*.

rules of the statute. Ordinarily, the price of commutation tickets, the conditions upon which they are sold, and the distance from a given city to which commutation rates are extended, are matters within the discretion of the carrier. However, where a carrier has established commutation rates for suburban service, especially when residences have been fixed, and business interests adjusted in reliance upon their continuance, it cannot suddenly or otherwise withdraw those rates and exact from all its patrons the full regular fare theretofore charged the occasional traveler.²⁶

In *Eschner v. Pennsylvania Railroad Co. et al.*,^{26a} the Commission stated: "If mileage, excursion, or commutation tickets are voluntarily put on sale by carriers, under tariff authority, that clause in the act means that they are exempted from a condemnation that other provisions of the act might require. We think it clear, therefore, that a carrier may not only withhold such special fares from its patrons by omitting to provide for them in its tariffs, but may at its pleasure, at least so long as no undue discrimination or other violation of the act is involved, attach conditions and restrictions to the use of such special fares."

¶ D. REGULATIONS GOVERNING COMMUTATION TICKETS MUST NOT DISCRIMINATE BETWEEN CLASSES OF PERSONS.

A carrier offers a 46-trip monthly commutation ticket and provides that it shall be issued only to pupils, without regard to age, who are in attendance at schools of a certain kind or class, and specifically provides for the exclusion of pupils attending various other kinds of schools: *Held*, That this regulation is unjustly discriminatory, and therefore unlawful, but that carriers may lawfully offer and use a commutation ticket limited in its sale and use to children or young persons between stated ages (*as, for instance, 12 to 21 years of age*). Such arrangement will provide desired rates for school pupils and will not exclude other children traveling under substantially similar

²⁶ Ibid.

^{26a} *Eschner v. Pennsylvania Rd. Co. et al.* (1910), 18 I. C. C. R. 60.

circumstances but for the purpose of securing other lines of instruction or on other missions. It will also protect against the use of such tickets by adults. The carrier may not inquire into the mission, errand, or business of the passenger as a condition of fixing the transportation rate which such passenger shall pay.²⁷

The Commission in affirming the above ruling in a later proceeding²⁸ states that Section 2 of the Act to Regulate Commerce precludes the allowance of commutation rates to school children unless the same rates are open to all children within the age limit.

¶ E. JURISDICTION OF COMMISSION OVER MILEAGE, EXCURSION AND COMMUTATION TICKETS.

See *Section 587, Paragraph E, post.*

¶ F. CONDITIONS AFFECTING USE OF MILEAGE BOOKS.

A mileage book is issued usually, if not invariably, at a rate less than the local fare, and in consideration of this the railroad company may, in the issuing of the mileage book, attach to its use various conditions. It might provide, for example, that it should not be used for transportation upon part of a through journey between a point on the railroad issuing the mileage book and a point on some other railroad, whether that journey be state or interstate.³¹

¶ G. SUPPLEMENTING MILEAGE BOOKS BY PAYING REGULAR LOCAL MILEAGE RATES.

The practice under a published tariff rule which permits the holder of a mileage book which does not contain enough coupons to enable him to complete his journey to pay for the balance of the journey at the regular local rate per mile, as published by the carrier, is not unlawful.³²

²⁷ Rule 99, Con. Rul. Bul. No. 4 (Oct. 12, 1908).

²⁸ In the Matter of Regulations Governing Sale of Commutation Tickets to School Children (1909), 17 I. C. C. R. 144.

³¹ See note 9, *supra*.

³² Rule 81, Con. Rul. Bul. No. 4 (June 9, 1908).

¶ H. USE OF INTRASTATE COMMUTATION TICKET IN INTERSTATE JOURNEY.

In the absence of a provision in the commutation contract forbidding it, a commutation ticket may be used between the points named on it in connection with an interstate journey on trains that stop at such points.³³

¶ I. EXCURSION TICKET INVALIDATED THROUGH FAILURE OF CARRIER TO MAKE CONNECTION.

A passenger traveling on a special limited excursion ticket with stopover privilege, leaves a stopover point in ample time to make all connections and meet conditions of ticket; but through successive delays to trains, misses connections at a certain junction, making the ticket twenty-four hours out of date. Regular fare was collected for the balance of the return trip. *Held*, That the carrier ought to make the ticket good, it having become invalid through its fault.³⁴

¶ J. USE OF MILEAGE TICKETS IN NEW TERRITORY.

A tariff authorizes the sale of mileage tickets good between points within a specified limited territory. Subsequent to the date upon which such a ticket is sold and prior to the date of its expiration, the tariff is amended so as to include additional territory. May such mileage ticket be thereafter honored for transportation between points in the added territory? *Held*, That the terms of the contract of original sale must be adhered to unless the amendment to the tariff specifically authorizes honoring outstanding tickets between points in the added territory.³⁵

§ 563. Party-Rate Tickets.

¶ A. PARTY-RATE TICKET DEFINED.

A party-rate ticket is a single ticket covering the trans-

³³ Rule 26, Con. Rul. Bul. No. 4 (Jan. 6, 1908).

³⁴ Rule 27, Con. Rul. Bul. No. 4 (Jan. 13, 1908).

³⁵ Rule 178, Con. Rul. Bul. No. 4 (May 10, 1909).

portation of a number of persons from one place to another on a railroad.³⁶

¶ B. LEGALITY OF PARTY-RATE TICKETS.

Defendant issued party-rate tickets at a lower rate per mile and per capita than it contemporaneously charged for the carriage of a single passenger between the same stations. On complaint that the lower per capita rate at which party-rate tickets were sold operated to discriminate unjustly as against single passengers, and to give party classes an undue or unreasonable preference or advantage, *Held*, In view of the fact that no competitive relation existed between a single passenger and party class, that the relative cost of the service in their transportation was different, that the profit derived from one fairly corresponded with that received from the other, and that the inducement on the part of the carrier for making the reduction in favor of party classes was the development and maintenance of a class of traffic which could not stand higher rates, the services were not substantially similar within the meaning of Section 2 of the Act to Regulate Commerce, nor the preference or advantage in favor of party classes undue or unreasonable under Section 3 of said Act. Such party-rate tickets are "commutation passenger tickets" within the meaning of Section 22 of the statute.³⁶

¶ C. UNITED STATES GOVERNMENT NOT ENTITLED TO THE BENEFIT OF PARTY RATE IN THE TRANSPORTATION OF ITS SOLDIERS, WHICH HAS BEEN ESTABLISHED FOR PLEASURE, THEATRICAL AND SIMILAR PARTIES.

The Chicago & Northwestern Railway had in effect a party-rate applicable to theatrical and amusement companies. The United States Government claimed the benefit of this rate. It transported over the line of the railway company certain parties of troops, more than ten in number, that being the

³⁶ I C. C. R. v. B. & O. Rd. Co. (1890), 43 Fed. Rep. 37, 43; affirmed, 145 U. S. 263; 12 Sup. Ct. Rep. 844; 36 L. ed. 699, refusing to enforce order of Commission, P. C. & St. L. Ry. Co. v. B. & O. R Co., 3 I. C. C. R. 465; 2 I. C. R. 729.

minimum number to which the party rate applied and insisted that in making settlement for the transportation of these troops it should be allowed the same rate per mile fixed by the party-rate schedule of the railway company. The lower Federal Court held otherwise, and the Circuit Court of Appeals affirmed that judgment. It held, that the circumstances and conditions under which the troops were transported for the Government were not the same as those under which theatrical and other amusement companies were moved by the railway company, noting the following differences:³⁷

1. The party-rate ticket is limited, whereas the Government requires a ticket of unlimited services.

2. The Government does not pay in advance for its ticket, but only settles after a considerable period of time and often much annoyance and inconvenience and sometimes actual deductions.

3. Many amusement companies and similar organizations could not travel if obliged to pay the regular rate of fare. The giving of these reduced fares stimulates this kind of business and adds to the revenues of the railways without any corresponding increase in the cost of operation.

4. While these tickets are only sold from point to point on the line of a particular railway; it is reasonably certain that the Company will buy more than the one ticket in going from place to place.

5. The traveling of amusement companies stimulates other kinds of travel. The performance of a great singer at some point on the line of a railway might induce hundreds of other persons to buy tickets to the same point, while the movement of ten soldiers would have no such effect.

6. The Government is not in any way in competition with any other members of the public in the movement of troops, and hence there can be no unjust discrimination.

³⁷ U. S. v. C. & N. W. Ry. Co. (1904), 127 Fed. Rep. 785; 62 C. C. A. 465.

¶ D. PARTY-RATE TICKETS MUST BE OPEN TO THE GENERAL PUBLIC.

On April 8, 1907, the Commission in a case entitled *In the Matter of Party-Rate Tickets*³⁸ held that party-rate tickets cannot be limited to particular classes of persons, but must be open to the general public. It will be seen from this opinion that under the holding of both our own and the English courts Section 2 prescribes a rigid rule of action. If the circumstances and conditions of the carriage itself are the same the charge must be the same. The Commission was unable to see how the carriage of ten persons belonging to an amusement company, as a party, differs from the carriage of ten other persons, as a party, in the same train, at the same time, and between the same points; and it was therefore of the opinion that the party-rate ticket must be open to the general public. It did not deem it necessary to discuss the question of policy involved since, in its opinion, the decisions of the Supreme Court precluded such discussion.³⁹ It may be observed, however, that these party-rate tickets are not confined to amusement organizations, nor to organizations at all. They are being extended to the movement of parties of beet weederers, of oyster shuckers, of hop pickers, of coal miners.

Nor is it correct to say that no competitive element is involved. Whether the harvest field or the coal mine shall be without laborers may depend upon the manner in which these very tickets are granted. To allow railway companies to accord to different individuals a different rate, when every incident of the carriage itself is the same, simply by reason of the difference in vocation of the passenger, in the opinion of the Commission, would introduce a most dangerous practice.

The Commission said: "That the man who sings is a dif-

³⁸ In the Matter of Party-Rate Tickets (April 8, 1907), 12 I. C. C. R. 96; affirmed in *Field v. Southern Ry. Co. et al.* (1908), 13 I. C. C. R. 298.

³⁹ *Wight v. United States*, 167 U. S. 512; 42 L. ed. 258; 17 Sup. Ct. Rep. 822; *I. C. C. v. Alabama Midland Ry. Co.*, 168 U. S. 144; 42 L. ed. 414; 18 Sup. Ct. Rep. 45.

ferent *kind* of traffic from the man who talks or the man who delves is certainly a novel proposition. The circumstances and conditions surrounding the transportation of these different individuals may be entirely different, but the Supreme Court has explicitly defined the limits within which such difference of circumstances and conditions may be considered.”

¶ E. DIFFERENT FARES TO DIFFERENT SOCIETIES UNLAWFUL.

A tariff covering daily picnic excursions between certain points for the season named fares for Sunday and day schools and different fares for “societies.” *Held*, That the tariff is discriminatory and that the fares for the school picnic should be the same as for society picnics.⁴⁰

¶ F. REGULATIONS GOVERNING ISSUANCE AND USE OF PARTY-RATE TICKETS.

The tariffs and regulations governing the issuance and use of party-fare tickets, together with the rules relating to the allowance of free baggage to persons using such tickets must be regularly filed and published. The privileges so extended must not be limited to any particular class or classes of persons, but must be open to all. Regulations governing the issuance and use of party-fare tickets must not be such as will operate to evade or nullify any provision of the law. The Commission suggested that the rules should provide that the party shall travel on one ticket and consist of not less than ten persons. The Commission has ruled that carriers may provide in their tariffs as follows:⁴¹

When a party of ten (10) or more persons are traveling on a party-fare ticket and require the exclusive use of a baggage car, and such baggage car is not forwarded upon the same train which bears the passengers, and where it is necessary that one or more of the party shall accompany the baggage car, a separate ticket may be issued for the use of such men as members of the party, provided such ticket is indorsed as a part of such party fare ticket and for, and limited to, the train upon which the baggage car is hauled.

It is not, however, lawful or permissible to permit a person

⁴⁰ Rule 71, Con. Rul. Bul. No. 4 (May 5, 1908).

⁴¹ Rule 62, Tariff Circular 17-A.

or persons to go in advance of or to follow the party as passengers and be computed as a part of the party or as entitled to the party fare. All tariff provisions to such effect are unlawful.⁴²

§ 564. Joint Interchangeable Five-Thousand-Mile Tickets.

¶ A. ISSUANCE OF SUCH TICKETS.

Section 22 of the statute provides, "That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles."

¶ B. PUBLICATION OF RATES.

The statute provides that before any common carrier, subject to the provisions of the Act, shall issue any such joint interchangeable mileage tickets with special privileges, as stated above, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried upon such tickets, in the same manner as common carriers are required to do with regard to other joint rates by Section 6 of the Act; and all the provisions of said Section 6 relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said Section 6.⁴³

¶ C. SALE OF TICKETS.

The statute provides that it shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less com-

⁴² Rule 62, Tariff Circular 17-A.

⁴³ See note 24, *supra*.

pensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time.⁴⁴

§ 565. Round-Trip Tickets on Certificate Plan.

Round-trip tickets on the certificate plan may be issued at reduced fares and their use confined to the delegates to a particular convention or to the members of a particular association or society, upon the condition that a certain number of such tickets shall be presented for validation for return trip before the reduced fare for return trip will be granted to any. Tariffs of fares and regulations governing issuance and use of round-trip tickets on the certificate plan must be regularly filed and posted, and the regulations must not be such as will operate to evade or nullify any provision of the law. The Commission has suggested that the rule should provide that not less than one hundred tickets shall be presented for validation for return trip before reduced fare will be granted to any.⁴⁵

Round-trip tickets on certificate plan may also be issued to Government employes going home to vote and returning to their employment.

It is represented that in many instances persons desiring to attend on some particular day the convention are prevented from promptly returning to their homes because the minimum number of tickets required has not been presented for validation. Answering numerous inquiries, the Commission has expressed the opinion that it would not be unlawful or improper for carriers to accept a satisfactory guaranty or bond of an association or society, *which is entitled to and for which the round-trip fare is made*, that the minimum number of tickets will be validated or the difference between the reduced fare and the full fare paid by the association or society, thus permitting the prompt validation of tickets and reduced re-

⁴⁴ See note 24, *supra*.

⁴⁵ Rule 53, Tariff Circular 17-A.

turn-trip fare, it being understood that if the specified number of tickets be not validated the society will, in good faith, be required to pay the difference agreed upon.⁴⁶

§ 566. Chartering Trains.

It is not unlawful for a railroad company to publish a tariff under which a locomotive and train of cars may be chartered at a named rate, tickets for the journey on that train to be sold by the person chartering the train.⁴⁷

§ 567. Charges for Moving Private Cars.

A tariff provided for the movement of a private car or sleeper at the regular fare for each occupant with a minimum of twenty adult fares and a minimum collection of \$25 for each movement. Its direct line being blockaded by a washout, a carrier sent individual passengers around a longer route over its lines at the short-line fare, but charged the occupants of such a private car then on its line the full mileage rates for the longer haul: *Held*, That under the tariff rule the car and party should have moved as the individual passengers were moved under the same circumstances; and that the short-line fare ought to have been applied to the private car and party.⁴⁸

§ 568. Validation of Round-Trip Passenger Tickets.

¶ A. CONDITIONS RELATING TO VALIDATION OF TICKETS MUST BE SHOWN IN TARIFFS.

The condition that a round-trip passenger fare ticket shall be validated for the original purchaser by carrier's agent at a given point is one of the conditions which affects the value of the service rendered to the passenger, and is one of the conditions that must be observed the same as the rate under which the ticket is sold, and must therefore be stated in the tariff under which it is sold. The tariff may provide for validation at numerous points, and it may provide for validation

⁴⁶ Rule 53, Tariff Circular 17-A.

⁴⁷ Rule 82, Con. Rul. Bul. No. 4 (June 9, 1908).

⁴⁸ Rule 138, Con. Rul. Bul. No. 4 (Feb. 2, 1909).

at any point intermediate to the original destination named in the ticket.

The conditions stated upon the ticket should not conflict with the tariff provisions, but if in any case there should inadvertently be conflict between the tariff provisions and the conditions stated on the ticket the tariff rule must govern.⁴⁹

¶ B. VALIDATING TICKETS IN CASES OF ILLNESS OR DEATH.

A carrier may provide in its tariff that in case of illness or death of passenger or member of his family who is traveling with him, specified officer of carrier may validate round-trip ticket held by such passenger at point short of that at which ticket would otherwise be validated.⁵⁰

¶ C. FAILURE TO VALIDATE PASSENGER TICKET.

A carrier may lawfully incorporate in its tariff a rule providing that when a passenger is compelled to pay the regular return fare because of his failure to have his round-trip ticket validated at the return starting point, the carrier will refund the extra fare upon the filing with it of an affidavit by the holder of the round-trip ticket, certifying that the ticket has been used in accordance with all the conditions of the tariff and the contract on the ticket, except as to the matter of validation.⁵¹

§ 569. Failure to validate Passenger Tickets.

Upon inquiry the Commission *held*, That a carrier might lawfully incorporate in its tariff a rule providing that when a passenger is compelled to pay the regular return fare because of his failure to have his round-trip ticket validated at the return starting point, the carrier will refund the extra fare upon the filing with it of an affidavit by the holder of the round-trip ticket, certifying that the ticket had been used in

⁴⁹ Rule 73, Tariff Circular 17-A; Rule 75, Con. Rul. Bul. No. 4 (May 12, 1908).

⁵⁰ *Ibid*.

⁵¹ *Ibid*.

accordance with all the conditions of the tariff and the contract on the ticket except as to the matter of validation.⁵²

§ 570. Stop-overs and Extensions of Time on Limited Tickets.

¶ A. EXTENSIONS MAY BE ALLOWED ON LIMITED TICKETS IN CASE OF ILLNESS.

Carriers may provide in their tariffs that limited passenger tickets may be extended in case of the illness of the passenger holding such ticket. Tariffs must give the title of the officer who shall have authority to give extension, and such officer shall be required by the carrier to keep a memorandum of each instance in which such extension is given, and the date upon which it is allowed. Such information shall be subject at any time to be called for by the Commission. This rule must be applied strictly and in good faith, and upon the carrier is placed the responsibility of strict conformity thereto. Only such illness as makes travel dangerous to the health of the traveler will justify the extension herein provided for.⁵³

¶ B. EXTENSION MAY INCLUDE MEMBERS OF FAMILY TRAVELING TOGETHER.

The above extension may also be granted to one or more members of the family of the passenger who is ill, when traveling together.⁵⁴

¶ C. EXTENSION IN CASES OF QUARANTINE.

The above extension may be granted to persons who are subject to an established quarantine.⁵⁵

¶ D. EXTENSION IN CASE OF WASHOUTS, WRECKS, ETC.

A carrier may provide in its tariffs that whenever, because of washouts, wrecks, or other obstruction to its tracks, public calamity, the act of God or of the public enemy, a passenger is delayed on its lines so that the limit of such passenger's

⁵² Rule 125, Con. Rul. Bul. No. 4 (Dec. 8, 1908).

⁵³ Rule 69, Tariff Circular 17-A.

⁵⁴ Ibid.

⁵⁵ Ibid.

ticket has expired or has elapsed to such an extent as to curtail his stopover privileges, the conductor or other specified agent will give by indorsement on the ticket or otherwise certificate of such detention, and that such certificate will operate to extend the limit of such ticket to the extent of detention so certified, and that such extension will be honored by succeeding conductors on its lines. It may also provide that like certificates of detention and extension given by other carriers will be honored on its line; but no carrier may so extend any part of a ticket reading over lines other than its own except when provision therefor is contained in a joint tariff properly concurred in.⁵⁶

¶ E. STOP-OVER PRIVILEGES.

Stop-over privileges for a limited time may be granted for the same causes and under the same conditions and restrictions as justify extension of time on limited tickets.⁵⁷

¶ F. PROVISION FOR EXTENSION MUST BE IN TARIFFS.

No extension of time upon limited tickets or stopover privileges will be recognized as valid unless provision therefor is made in the carrier's published tariffs.⁵⁸

§ 571. Limitation of Time in Passenger Tickets.

A passenger traveling on a round-trip ticket containing the provision that "This ticket will be good for return trip to starting point prior to midnight of date punched by selling agent in column 2. Final limit"; did not reach the last connecting carrier before the date punched on the ticket. The passenger was required to pay full fare on the last connecting line. *Held*, That a refund could not lawfully be made.⁵⁹

§ 572. No Refund to Passenger who exceeds Stop-over Limit.

A passenger, while availing himself of a stopover privilege at a certain point in his journey, was subpoenaed as a witness

⁵⁶ Rule 69, Tariff Circular 17-A.

⁵⁷ *Ibid*.

⁵⁸ *Ibid*.

⁵⁹ Rule 44, Con. Rul. Bul. No. 4 (March 3, 1908).

in a proceeding in a civil court, and obeying the process was not able to proceed on his journey within the time limit of the stopover. As a result he was compelled to pay an additional fare from that point to destination. *Held*, That a refund could not lawfully be made.⁶⁰

§ 573. The Use of Pullman Cars at Stop-over Points cannot be Limited to Members of a Particular Club.

A carrier desiring to make excursion rates to a point where a convention is to be held wishes to accord to members of certain clubs the privilege of occupying the sleeping cars while the convention is in session: *Held*, That the carrier may lawfully arrange an excursion rate to such point and return, the rate to include sleeping-car accommodations to and from that point with the privilege of occupying the car at that point during the convention; but that the Commission does not understand that the carrier may limit the privilege to the members of any particular club.⁶¹

§ 574. Redemption of Unused Passenger Tickets.

Because of illness or other compelling reason a passenger sometimes abandons a trip short of destination to which the fare has been paid, or returns from a point short of that to which he has purchased a round-trip ticket. On the question of the right of the carrier to refund the fare in such a case, the Commission decided that when a passenger has paid more than the lawful tariff fares for the journey actually made the carrier may lawfully redeem the unused ticket and make refund on the basis of the lawful tariff fare for the service actually rendered, when investigation develops clear identity between purchaser of ticket and the one to whom refund is made.⁶²

The unused portion of a passenger ticket, when presented by the original holder to the carrier that issued it, may lawfully be redeemed by the carrier by paying to the holder the difference between the value of the transportation furnished

⁶⁰ Rule 60, Con. Rul. Bul. No. 4 (April 7, 1908).

⁶¹ Rule 51, Con. Rul. Bul. No. 4 (March 11, 1908).

⁶² Rule 115, Con. Rul. Bul. No. 4 (Nov. 12, 1908).

on the ticket at the full tariff rates and the amount originally paid for the ticket.⁶³

§ 575. Refund of Unused Portion of Round-Trip Ticket.

Because of a washout of a portion of its tracks a carrier was unable to operate trains and thus return a passenger over that route within the time limited in a round-trip ticket which she held. A circuitous route was open to her, but on account of her age and the condition of her health she did not think it safe to take so long a journey, and therefore, waiting until the tracks had been repaired, which was after the expiration of the time limit of the ticket, she purchased a one-way ticket back to her home: *Held*, That as the carrier was not able to furnish the service which it undertook to furnish within the time limited in the round-trip ticket, it might lawfully refund the extra return fare so paid by the passenger.⁶⁴

§ 576. Passenger Ticket honored by Wrong Line.

A coupon reading over one line was honored through error by the conductor of another line running between the same points, and the latter called upon its conductor to make good the amount: *Held*, That the matter was one of discipline between the company and its conductor, and was not cognizable by the Commission.⁶⁵

§ 577. Tickets for Transportation and Meals, Hotel Accommodations, etc.

A carrier published a tariff offering certain transportation fares and rates for personally-conducted tours with tickets to cover meals, hotel accommodations, etc., and declined to sell the transportation ticket to any one who does not also purchase the tickets covering meals and hotel accommodations. *Held*, That the two matters must be kept separate, and carriers may not decline to sell such transportation without tickets for meals and hotel accommodations.⁶⁶

⁶³ Rule 76, Con. Rul. Bul. No. 4 (May 12, 1908).

⁶⁴ Rule 116, Con. Rul. Bul. No. 4 (Nov. 13, 1908).

⁶⁵ Rule 105, Con. Rul. Bul. No. 4 (Nov. 9, 1908).

⁶⁶ Rule 28, Con. Rul. Bul. No. 4 (Jan. 13, 1908).

§ 578. Entertainment provided, or Contribution made by a Carrier.

A carrier's agent may, as a matter of convenience, sell admission tickets to entertainments in connection with which excursion-fare tickets are sold, but the purchase of such admission tickets must not be made a condition of the sale of transportation ticket.

The Act does not prohibit a carrier from providing in its own interest and as a means of stimulating travel over its line an entertainment at a point on its line; nor from contributing to the expense of such an entertainment if such contribution be made in a definite sum and be in no way dependent or contingent upon the number of tickets sold, and provided that no part of such contribution be by any device or through any person whatever permitted to effect any departure from or discrimination under the carrier's tariff fares.⁶⁷

§ 579. Established Passenger Fares must be observed.

Passenger fares lower than the established tariff are prohibited by the statute.⁶⁸

It is certainly true that if carriers publish a joint through rate between two points they cannot contract to transport the passenger between those points for a less sum than the published schedule.⁶⁹

In every instance where there is a *specific* fare from point of origin to point of destination it must be applied to through passengers regardless of possible lower combinations.⁷⁰

A joint fare when duly established and in force becomes the only lawful fare for through transportation.⁷¹

A through fare from point of origin to destination of a passenger is the lawful fare applicable to that movement, whether

⁶⁷ Rule 221, Con. Rul. Bul. No. 4 (1908).

⁶⁸ Re Passenger Tariffs and Rate Wars (1889), 2 I. C. R. 340, 2 I. C. C. R. 513.

⁶⁹ See note 9, *supra*.

⁷⁰ Rule 64, Tariff Circular 17-A

⁷¹ Rule 55, Tariff Circular 17-A.

the fare be confined to the line of one carrier or be a joint fare applying over the lines of two or more carriers.⁷²

§ 580. Carrier may employ Person to work Up Excursion Travel.

A carrier may, actually and in good faith, employ a person to act for it in working up passenger excursions, and make his compensation depend upon the results from his efforts, by executing contract in the following form and filing copy of same, together with reference by I. C. C. number to the tariff which contains the fares, with the Commission.⁷³

The Rail Company, having arranged to run an excursion from to and return, on, to be known as the excursions, at the following fares: Adults,; children,, hereby engages the services of, residing at, to solicit and develop business for said excursion. The said hereby agrees to devote to this work such portion of his time from to as may be necessary, in consideration of which the Rail Company agrees to compensate him as follows: If adult tickets, or their equivalent are sold, cents for each adult and cents for each half ticket so sold.

It is understood and agreed that no compensation will be paid hereunder if less than adult tickets, or their equivalent are sold.

It is understood and agreed that no part of the compensation paid by the Rail Company to the said shall be used, either directly or indirectly, to reduce the lawful published fares announced by the said Rail Company, or to in any other manner violate the terms of the Act to Regulate Commerce or any other federal or state law regulating common carriers.

§ 581. Error by Carrier's Agent causing Passenger to pay Additional and Unnecessary Charges.

Agents of carriers sometimes misroute passengers or by other error cause passengers to pay additional and unnecessary transportation charges. The Commission has stated that such cases are governed by the same principle as applicable to the misrouting of freight traffic.⁷⁴ The reader is therefore referred to *Section 424, ante*.

⁷² Rule 55, Tariff Circular 17-A.

⁷³ See note 67, *supra*.

⁷⁴ Rule 113, Con. Rul. Bul. No. 4 (Nov. 12, 1908).

§ 582. Nontransferable Passenger Tickets.

¶ A. RIGHT OF CARRIER TO ISSUE NONTRANSFERABLE PASSENGER TICKETS.

Railroad companies have the right to sell nontransferable reduced-rate excursion tickets,⁷⁵ and the condition of non-transferability and forfeiture embodied therein is not only binding upon the original purchaser but upon anyone who acquires such a ticket and attempts to use the same in violation of its terms.⁷⁶

¶ B. DUTY OF CARRIER TO CAUSE THE NONTRANSFERABLE CLAUSE TO BE OPERATIVE AND EFFECTIVE.

The express recognition in the Act to Regulate Commerce of the power of carriers engaged in interstate commerce to issue nontransferable reduced-rate excursion tickets, when considered with the restrictions embodied in the Act concerning equality of rates, and with the prohibition against preferences, must be regarded as charging the carrier with the duty of exercising due diligence to prevent the use of such tickets by others than the original purchasers, and hence cause the nontransferable clause to be operative and effective against anyone who wrongfully attempts to use such tickets.⁷⁷

¶ C. NONTRANSFERABLE LIMITATION IN PASSENGER TICKET VOID UNLESS SHOWN IN PUBLISHED SCHEDULE.

Under the Interstate Commerce Act as amended by the Act of June 29, 1906, which, after requiring carrier to publish and file schedules showing all of their rates, fares, and charges, provide that "the schedule printed as aforesaid by any such common carrier shall plainly state * * * all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect or determine * * * the value of the service rendered the passenger, shipper or con-

⁷⁵ Mosher v. St. L. I. M. & S. Ry. Co. (1887), 127 U. S. 390, 8 Sup. Ct. 1324, 32 L. ed. 249.

⁷⁶ Bitterman v. L. & N. Rd. Co., 207 U. S. 205; 52 L. ed. 171, 28 Sup. Ct. 91 (1907).

⁷⁷ Ibid.

signee," a provision in a passenger ticket sold by a railroad company making it nontransferable where no such limitation is shown in the company's schedule, is unlawful and void, and the company cannot maintain a suit in equity based on such provision to enjoin transfer of such tickets.⁷⁸

§ 583. Publication of Passenger Fares.

See *Chapter 34, post*.

§ 584. Published Fares must not be deviated from.

The statute provides that no common carrier shall charge or demand or collect or receive a greater or less or different compensation for the transportation of passengers, or for any service in connection therewith, between the points named in the tariffs than the fares and charges which are specified in the tariffs filed and in effect at the time.⁷⁹

§ 585. Discrimination in Fares for Transportation of Passengers.

See *Section 379, ante*.

§ 586. Jurisdiction of Interstate Commerce Commission over Passenger Fares and Tickets.

¶ A. COMMISSION MAY DETERMINE AND PRESCRIBE JUST AND REASONABLE FARES TO BE OBSERVED AS MAXIMA CHARGES FOR TRANSPORTATION OF PASSENGERS.

The Act to Regulate Commerce (*as amended June 18, 1910*) authorizes and empowers the Commission, whenever, after full hearing on a complaint made as provided in Section 13 of the Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), it shall be of the opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of the Act for the transportation of persons as defined

⁷⁸ B. & O. R. Co. et al. v. Hamburg et al. (1907), 155 Fed. Rep. 849.

⁷⁹ Act to Regulate Commerce. Section 6.

in the first section of the Act, or that any individual or joint regulations or practices whatsoever of such carrier or carriers subject to the provisions of the Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of the Act, to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged.⁸⁰

¶ B. COMMISSION MAY UPON ITS OWN INITIATIVE ENTER UPON HEARING CONCERNING PROPRIETY OF NEW FARE.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that whenever there shall be filed with the Commission any schedule stating a new individual or joint fare or charge, or any new individual or joint regulation or practice affecting any fare or charge, the Commission shall have, and it is given authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such fare, charge, regulation, or practice.^{80a}

¶ C. COMMISSION MAY DETERMINE AND PRESCRIBE JUST AND REASONABLE REGULATIONS OR PRACTICES.

The Commission may determine and prescribe what regulation or practice in respect to passenger transportation is just, fair, and reasonable to be thereafter followed.⁸¹

¶ D. COMMISSION MAY ORDER CARRIERS TO CEASE AND DESIST FROM FULL EXTENT OF VIOLATIONS FOUND.

The statute empowers the Commission to make an order that the carrier or carriers shall cease and desist from the violation

⁸⁰ Act to Regulate Commerce. Section 15 (as amended June 18, 1910).

^{80a} Ibid.

⁸¹ Ibid.

as stated in *Paragraph A, supra*, to the extent to which the Commission finds the same to exist, and to not thereafter publish, demand or collect any other rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and to conform and observe to the regulation or practice so prescribed.⁸²

¶ E. ORDERS OF COMMISSION SHALL CONTINUE IN FORCE NOT EXCEEDING TWO YEARS UNLESS SUSPENDED OR SET ASIDE BY COMMISSION OR COURT.

The statute provides that all orders of the Commission relating to rates or charges shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction.⁸³

¶ F. JURISDICTION OF COMMISSION OVER MILEAGE, EXCURSION AND COMMUTATION TICKETS.

The Act as originally adopted in 1887 provided in Section 22, "That nothing in this Act shall *apply to* * * * the issuance of mileage, excursion or commutation passenger tickets." As amended in 1889 it now reads, "That nothing in this Act shall *prevent* * * * the issuance of mileage, excursion or commutation passenger tickets." This is a very important change and must be assumed to have been made for some purpose. One purpose may very well have been to remove any possible doubt whether under the law as it existed before the general rules of equality, impartiality, and publicity prescribed for other cases were applicable to these classes of tickets to which in terms it was said nothing in the Act should apply. These words of exclusion are no longer in the statute and the general requirements it makes are as applicable to these classes of tickets as to any others. They must, there-

⁸² Act to Regulate Commerce, Section 15 (as amended June 18, 1910).

⁸³ *Ibid.*

fore, be offered impartially to all who accept the conditions on which they are issued, and the rates must be published as is required in the case of other tickets.^{83a} Compliance with the general rules of the statute may be directed by the Commission, but requiring exceptions thereto is not within its province; and this applies as well to the restoration of such tickets where they have been withdrawn as to the refusal to furnish them where their introduction has been requested. It may be, however, that the allowance of commutation rates at stations on one line of a railway system, and the denial of such rates at stations on another line of the same system, such stations being of *similar character* and *similar distances* from a common terminus, would be an undue preference within the power of the Commission to correct.^{83b} However, the language of the Act relating to the issuance of mileage, excursion and commutation tickets is altogether permissive, and the Commission has no affirmative power to require carriers to establish for the use of passengers on particular occasions or for special purposes, special fares based upon less than a normal passenger-mile revenue.⁸⁴

¶ G. POWER OF COMMISSION TO RESTRAIN ENFORCEMENT OF
NEW FARE OR CHARGE OR REGULATION OR PRACTICE
AFFECTING SAME PENDING INVESTIGATION.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) reads as follows:

“Whenever there shall be filed with the Commission any schedule stating a new individual or joint * * * fare, or charge * * * or any new individual or joint regulation or practice affecting any * * * fare or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal

^{83a} Re Passenger Tariffs (1889), 2 I. C. R. 445; 2 I. C. C. R. 649.

^{83b} See note 22, *supra*.

⁸⁴ *Eschner v. Pa. Rd. Co.* (1910), 18 I. C. C. R. 63, predicated on *Field v. Southern Ry. Co. et al.* (1908), 13 I. C. C. R. 298, citing *Cator v. Southern Pacific Ry. Co. et al.* (1893), 4 I. C. R. 397, 6 I. C. C. R. 113, and *Sprigg v. B. & O. R. R. Co. et al.* (1900), 8 I. C. C. R. 443.

pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such * * * fare, charge, * * * regulation or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such * * * fare, charge, * * * regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such * * * fare, charge, * * * regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the * * * fare, charge, * * * regulation, or practice goes into effect, the Commission may make such order in reference to such * * * fare, charge, * * * regulation, or practice as would be proper in a proceeding initiated after the * * * fare, charge, * * * regulation, or practice had become effective; *Provided*, That if any such hearing cannot be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months."

¶ H. COMMISSION NO AUTHORITY TO ESTABLISH FARES WITH
INDEPENDENT WATER CARRIERS.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) provides that the Commission shall not have the right to establish any fare or charge when the transportation is wholly by water, and that any transportation by water affected by that act shall be subject to the laws and regulations applicable to transportation by water.

§ 587. Tickets purchased at the Regular published Fare may be Given by a Land Company to Prospective Purchasers.

A land company having no relations, direct or indirect, with a carrier has a lawful right to pay all or any part of the carrier's transportation charges for such persons as it may choose to supply with tickets.⁸⁵

⁸⁵ Rule 154, Con. Rul. Bul. No. 4 (April 5, 1909).

§ 588. A Carrier must publish Fares and offer to the Public Railroad Tickets Independent of Omnibus Arrangements.

A carrier under a tariff provision sold excursion tickets to a point on its line to which is attached a coupon for carriage from that point to Luray Caverns and return on the omnibuses of a designated transfer company: *Held*, That this was not a discrimination under the Act against another transfer company. The Commission ruled, however, that while such tickets may lawfully be sold, the carrier must publish the railroad fare to the point in question and separately show 'bus fare beyond, and must also have on sale tickets to that point at the rate named without 'bus coupon attached.⁸⁶

§ 589. Sale of Tickets after Departure of Last Train on Final Selling Date.

Tariff quoting passenger fares provides that tickets shall be on sale between certain specified dates and that they shall be good going for a specified period, including the date of sale. Passenger desiring to take advantage of such fare applied for such ticket on the last day of sale and after the last train for the day had departed from that station. Agent refused to issue the ticket desired. The time limit specified in the tariff was sufficient to carry the passenger through to destination within that limit even if he left the initial point on the day following the last date of sale. Tariff did not require that journey should commence on the date of sale of ticket: *Held*, That agent should have issued the ticket requested, the time limit thereunder being sufficient to carry passenger through to destination by his starting on the following day, and the tariff containing no requirement as to the date upon which the journey should begin; *Held further*, That if the tariff had provided that the journey must commence on the day of sale of ticket, agent could not legally have issued such ticket after the last train for the day had departed on the last date of sale.⁸⁷

⁸⁶ Rule 164, Con. Rul. Bul. No. 4 (April 12, 1909).

⁸⁷ Rule 182, Con. Rul. Bul. No. 4 (June 7, 1909).

CHAPTER XXXIII.

FREE AND REDUCED-RATE TRANSPORTATION OF PASSENGERS.

SECTION

590. The Evils of Free Transportation which were sought to be Corrected by the Act to Regulate Commerce.
591. Unlawful for Carriers to issue or give any Interstate Free or Reduced-Rate Transportation.
592. Penalty of Carrier for issuing or giving Free Transportation in Violation of the Statute.
593. Penalty of Person using Free Transportation in Violation of the Statute.
594. Excepted Classes enumerated in the Act to Regulate Commerce to whom Interstate Free or Reduced-Rate Transportation may Lawfully be Issued or Given.
595. Common Carriers may grant Reduced-Rate Transportation to Persons entitled to Free Transportation.
596. Forms of Passes to Persons Eligible to receive Free Transportation.
597. Interchange of authorized Passes or Franks by Common Carriers.
598. Free Transportation to Officers and Employés of Common Carriers and their Families and Household Effects.
599. Penalty of Employé of Carrier who delivers his Pass to a person not Authorized to Receive it, where such Person uses the same.
600. Free Passes to Household Servants.
601. Free Transportation to Necessary Agents or "Caretakers" of certain Shipments of Property and of certain Classes of Passengers.
602. Free Transportation of Shippers and Dealers.
603. Free and Reduced Rate Transportation to Clergymen and Persons engaged in Charitable Work and their Families.
604. Free Transportation of Railway-Mail Service Employés.
605. Free Transportation to Officers and Employés of Subsidiary Corporations.
606. Exchange of Free Transportation with Telegraph, Telephone and Cable Companies.
607. Free and Reduced-Rate Transportation to Contractors and Men employed in the Construction and Improvement of Line of Carriers.

SECTION

608. Reduced-Rate Transportation for Federal Troops and Marines.
609. Free Transportation to Officers of the Government, the Army and Navy, and their Families.
610. Free Transportation to Officers and Employés of News Companies.
611. Free Transportation to Public Officials.
612. Reduced-Rate Transportation to Commercial Travelers.
613. Reduced-Rate Transportation to Immigrants.
614. Free Transportation to Land Explorers and Settlers.
615. Free Transportation to Land and Immigration Agents.
616. Free Transportation to Officers and Employés of Carriers not subject to the Act to Regulate Commerce.
617. Free Transportation of Employés of Express Companies over Railroads.
618. Reduced-Fare Transportation for the Deportation of Chinese not Permissible.
619. Free Transportation of Man taking Measurements of Employés of Carriers for Uniforms.
620. Miscellaneous Persons not lawfully entitled to Free Transportation.
621. Excursion, Commutation and Mileage Tickets and Other Special Passenger Arrangements.
622. Party-Rate Tickets.
623. Use of State Passes in Interstate Journeys.
624. Contracts Entered into prior to the Passage of the Act for Free Transportation based upon Moneyed or other Valuable Considerations.
625. Validity of Stipulations in Railway Passes against Liability of Carrier for Injury.
626. Destruction by Carriers of the Records or Memoranda Relating to Passes.
627. Unjust Discrimination in granting Free or Reduced-Rate Transportation.

§ 590. The Evils of Free Transportation which were sought to be Corrected by the Act to Regulate Commerce.

“The Act to Regulate Commerce undoubtedly was framed to prohibit passes or free transportation of persons as one of the forms of unjust discrimination, favoritism and misuse of corporate powers that had grown into an abuse of large proportions and become demoralizing in its influence and detrimental to railroads, both in loss of revenue and in provoking public hostility. One of the minor and meaner phases of this

abuse was the distinctive preference shown in various ways by employees, both in service and civility, to holders of passes, as if discrimination of free carriage included discrimination in the treatment of passengers.

“It was well known that the persons who were carried free were, to a large extent, precisely the persons who had no claim whatever to such favors. They were officials and others, from whom free passes might be expected to secure reciprocal favors, and men of wealth and prominence who rode at the expense of others less able to pay; or the passes were given to influence business. In nearly all cases not specially exempted by the Act, the motive in demanding or in giving them was one deserving of no favor.”¹

“Passes to shippers, or those who control shipments, reduced the cost of freight transportation to them by the amount of the established fares covering such journeys as their business, and often their pleasure, required, and it is obvious that the amount of rebate from freight charges thus given to different shippers must always be variable. The “pass device” not only resulted in payment of less than the established freight rates by shippers, but, like all other illegitimate concessions to railway patrons, it brought about discrimination between those to whom such transportation favors were granted. The issuance of these passes, annual or trip, was not always confined to a single person in any one shipping establishment; the favors once extended to a member of the firm or a traveling employee, might be demanded with as much reason for others connected with the business. These demands, coming from shippers having the choice of two or more competing routes, were attended with the implied threat that failure to comply might result in loss of freight business; and the fact that they were made upon each of the competing roads seemed to make little, if any, difference.

“Another necessary result of issuing passes at the request of shippers or receivers of goods, in order to secure or retain patronage, was that the person or firm doing the greatest amount

¹ Third Annual Report of I. C. C. (1889).

of business was generally able to obtain or have offered the largest number of passes. The giving of free transportation to members or employees of a shipping concern resulted plainly in two kinds of unjust discrimination—one against other shippers and one against other passengers.”²

“The law aimed at the correction of the abuses of free transportation and in accomplishing this general purpose, some forms of free or reduced transportation that at first view might appear plausible, or even unobjectionable in themselves, fell under its general restrictions. The principle of equality, under like conditions, for the traveling public had been grossly violated by the railroads. Favored persons or classes of persons had been furnished free transportation at the expense of the general public by higher general charges to reimburse for gratuitous carriage. The discrimination is equally unjust whether the free transportation be complimentary or to aid some person’s business, or for some supposed indirect advantage to the carrier. The correction of the evil, and the equality of right to which all are entitled, required the restrictions to be general and sweeping to furnish any substantial assurance that the abuse should not be continued or new ones devised under cover of any discretion left to the carrier.

“For reasons deemed adequate by the legislative body certain specified exceptions are made in the statute of classes of persons to whom reduced rates or free transportation may lawfully be given, in whose favor discrimination was not deemed unjust. The classes of persons that may have reduced rates or free carriage are carefully specified in the statute, and their enumeration necessarily excludes all others.”³ These excepted classes are treated of in the sections following. For further explanation as to the evils of free transportation see comments under “*Historical Antecedents*,” Chapter 1, *ante*.

² Tenth Annual Report of I. C. C. (1896).

³ See note 1, *supra*.

§ 591. Unlawful for Carriers to issue or give any Interstate Free or Reduced-Rate Transportation.

Section 1 of the Act to Regulate Commerce prohibits every common carrier subject to the provisions thereof from issuing or giving, directly or indirectly, any interstate free ticket, free pass, or free transportation for passengers.⁴

Section 6 of the Act also provides that no carrier subject to its provisions shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers, or for any service in connection therewith, between the points named in the tariffs, than the rates, fares, and charges which are specified in the tariffs filed with the Commission and in effect at that time; nor shall any carrier refund or remit in any manner or by any device any portion of the rate, fares, and charges specified, nor extend to any person any privileges or facilities in the transportation of passengers except such as are specified in such tariffs.⁵

An officer of a railroad company engaged in interstate commerce who, as a matter of personal favor, issues to a person not within the exception contained in the Interstate Commerce Act, a free pass for transportation from one State to another, is guilty of a violation of the Act.⁶

§ 592. Penalty of Carrier for issuing or giving Free Transportation in Violation of the Statute.

See *Section 756, post*.

§ 593. Penalty of Person using Free Transportation in Violation of the Statute.

See *Section 757, post*.

§ 594. Excepted Classes enumerated in the Act to Regulate Commerce to whom Interstate Free or Reduced-Rate Transportation may Lawfully be Issued or Given.

The following is an enumeration of the excepted classes of

⁴ Act to Regulate Commerce. Section 1.

⁵ Act to Regulate Commerce. Section 6.

⁶ In Re Charge to Grand Jury (1895), 66 Fed. Rep. 146.

persons to whom interstate free tickets and free passes, and free or reduced-rate transportation, may lawfully be issued or given,⁷ and these classes for convenience may be divided into four groups, viz.:

(1) To employees of common carriers and their families; to their officers, agents, surgeons, physicians and attorneys-at-law;

(2) To ministers of religion, traveling secretaries of railroad Young Men's Christian Associations; inmates of hospitals and charitable and eleemosynary institutions; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation, or to municipal governments for the transportation of indigent persons; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning after discharge;

(3) To necessary caretakers of live stock, poultry, milk and fruit; to employes on sleeping cars, express cars, and to line-men of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents; witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and nurses attending such persons;

(4) To passengers carried free by common carriers with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation.

¶ A. TERM "EMPLOYEES" DEFINED.

The Act provides that the term "employees" as used in this section shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such carrier, and the remains of a person killed in the employment of a carrier and ex-em-

⁷ Act to Regulate Commerce. Sections 1 and 22.

ployees traveling for the purpose of entering the service of any such carrier.⁸

¶ B. TERM "FAMILIES" DEFINED.

The Act provides that the term "families" as used in this section shall include the families of persons killed, and the widows during widowhood and minor children during minority of persons who died while in the service of any such common carrier.⁹

The Commission holds that the word "family" as used in Section 1 of the Act to Regulate Commerce, includes those who are members of, and who habitually reside in the household of the person eligible to receive family passes, including household servants when traveling with the family or with any member thereof, and relatives who are in fact dependent upon such person, although not actually residing in his household.¹⁰

An engineer of one carrier having ended his run for the day was preparing to return to his home over another line, the train service of which was more convenient. He lost his life by inadvertently stepping in front of a train of this carrier. Upon inquiry whether under the provisions of Section 1 free transportation might be given to his widow and children by the road by which he had been employed: *Held*, That the case comes within the spirit and meaning of that section.¹¹

May an employee use free transportation for the remains of his wife after they had been temporarily interred? *Held*, That within the meaning of Section 1 of the Act, the deceased wife of an employee may be regarded as a member of his family until given permanent burial.¹²

The Commission has expressed the view that the spirit and meaning of the law with relation to free passes for employees and their families will not be violated, if in the case of the

⁸ See note 4, *supra*.

⁹ *Ibid*.

¹⁰ Rule 95, Con. Rul. Bul. No. 4 (June 30, 1908).

¹¹ Rule 173, Con. Rul. Bul. No. 4 (May 4, 1909).

¹² Rule 174, Con. Rul. Bul. No. 4 (May 4, 1909).

death of an employee while in the service of a carrier free transportation be given to his remains, and to members of his family who might lawfully use free transportation if he were still alive, to the place of interment and return to their homes.¹³

The persons embraced within groups 1 and 2 of the above enumerated classes may use such transportation for their personal benefit or pleasure.

As to the persons enumerated in group 3, the right to use such transportation is limited to the occasions of actual employment in the designated capacity.

The persons enumerated in group 4 are transported free only in cases of dire necessity, as stated.

The above named classes of persons are the only ones to whom carriers may issue or give free interstate transportation, and the Commission has no authority to increase the list. Where the Congress has expressly enumerated special classes of persons or things that may be exempted and excepted from the operation of general provisions in a law, the Commission cannot enlarge excepted classes by mere construction to include in them persons or things not thus expressly named in the statute itself.¹⁴

§ 595. Common Carriers may grant Reduced-Rate Transportation to Persons entitled to Free Transportation.

Reduced-rate may be granted to such persons as are specified in the law as those to whom free transportation may be given.¹⁵

§ 596. Forms of Passes to Persons Eligible to receive Free Transportation.

Each pass issued must bear upon its face the name of some person belonging to a class named in Section 1 of the Act as eligible to receive free transportation. In addition to such

¹³ Rule 193, Con. Rul. Bul. No. 4 (June 14, 1909).

¹⁴ In the Matter of Free Transportation of Newspaper Employees on Special Newspaper Trains, 12 I. C. C. R. 16; see also Re Exchange Free Transportation, 12 I. C. C. R. 40 (1907).

¹⁵ Rule 208, Con. Rul. Bul. No. 4 (Oct. 12, 1906).

person so named a pass may also carry not to exceed a specified number of unnamed persons of any class eligible to receive free transportation; the number and the class to which such person belongs being specified upon the face of the pass. That is to say, passes in the following forms will be recognized by the Commission as legal:¹⁶

Pass John Smith, President, car, and five officers and employees of the X. Y. & Z. Railway.

Pass J. R. Barner and six linemen, foreman, and force of the Western Union Telegraph Company. Good only when traveling in connection with the construction, maintenance, or operation of the lines of the Western Union Telegraph Company on the right of way of the A. B. C. Railway Company.

Pass one extra messenger of the Southern Express Company when presented with letter signed by Superintendent, Assistant Superintendent, or Route Agent of said Express Company, authorizing use and giving name of person to be passed.

Pass John Smith, section foreman, and six employees of X. Y. Z. Railway.

Pass John Smith, wife, two sons, three daughters and two servants.

Pass Mrs. John Smith and daughter, account John Smith, Agent X. Y. Z. Railroad Company at Washington, D. C.

The name of the person presenting the pass must appear upon it. Passes intended to be used in the absence of the head of the family whose occupation makes the issuance of passes lawful must, in addition to the name of said head, show the name of the person using the same. For instance, a pass to be used by John Smith, his wife, or his daughter, separately, should read:

Pass John Smith, Mrs. John Smith and Miss Mary Smith, account C. & O. Agent at Richmond, Va.

Every pass to an officer or employee of a carrier other than the one issuing the pass, shall indicate the name and rank of the person to, or on behalf of whom, such pass is issued, as well as the name of the carrier employing him.¹⁷

§ 597. Interchange of authorized Passes or Franks by Common Carriers.

A common carrier subject to the Act to Regulate Commerce

¹⁶ See note 10, supra.

¹⁷ Ibid.

may lawfully interchange free passes for the use of their officers, agents, and employees and their families. The Act also provides that nothing shall be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employés, and their families, of telegraph, telephone and cable lines, and the officers, agents, employés and their families of other common carriers subject to the provisions of the Act.¹⁸ This applies to express companies subject to the Act.¹⁹

When a common carrier by water, other than an ocean carrier, not subject to the Act, united with a carrier by rail for the interstate transportation of passengers, partly by water and partly by rail, under a common control, management or arrangement for a continuous carriage shown by concurrence in tariff or tariffs duly published and filed with the Commission, such carriers may lawfully interchange transportation for their officers, agents, and employés.²⁰

§ 598. Free Transportation to Officers and Employés of Common Carriers and their Families and Household Effects.

¶ A. OFFICERS AND EMPLOYEES.

The provision of the Act relative to the issuance of free tickets, free passes, free transportation, or free carriage of employés of carriers, apply only to persons who are actually in the service of the carriers and who devote substantially all of their time to the work or business of such carrier.²¹

The Commission does not construe the law as preventing a carrier from giving necessary free transportation to a person traveling over its line solely for the purpose of attending to the business of or performing a duty imposed upon the carrier.²²

The Commission will recognize any rail or water carrier filing a tariff, joint or local, with the Commission, as a carrier

¹⁸ See note 4, *supra*.

¹⁹ Rule 157, Con. Rul. Bul. No. 4 (April 6, 1909).

²⁰ Rule 196, Con. Rul. Bul. No. 4 (June 14, 1909).

²¹ See note 15, *supra*.

²² *Ibid*.

subject to the Act so far as the issuance of passes to its officers and employees may be concerned. Where a carrier has no tariff on file with the Commission, and does not acknowledge itself subject to the Commission's jurisdiction, the Commission will regard the issuance of passes to its officers or employees as unlawful, without, however, thereby passing upon the question of the jurisdiction of the Act over such carrier in so far as it may be necessary to assert such jurisdiction.²³

¶ B. FREE PASSES TO EX-EMPLOYEES.

Under the recent amendment to the antipass provision of Section 1: *Held*, That a pass may be issued to a bona fide ex-employee of any carrier subject to the Act, who is traveling for the purpose of entering the service of any such common carrier, whether such service has or has not previously been arranged for.²⁴

¶ C. FAMILIES OF OFFICERS AND EMPLOYEES.

The Act authorizes the giving of free transportation to the families of the employes of common carriers.²⁵ This does not include the families of local attorneys, surgeons, and others who are not regularly employed by the carriers.²⁶ Free transportation may lawfully be accorded to members of the family accompanying an ex-employee traveling for the purpose of entering the service of any common carrier subject to the Act.²⁷

The recent amendment to the Act of June 18, 1910, makes the term "families" include the widows during widowhood and the minor children during minority of persons who died while in the service of any common carrier.²⁸

¶ D. FREE TRANSPORTATION OF HOUSEHOLD EFFECTS OF AN EMPLOYEE.

The Commission does not construe the law as preventing

²³ See note 10, *supra*.

²⁴ Rule 102, Con. Rul. Bul. No. 4 (Oct. 13, 1908).

²⁵ See note 1, *supra*.

²⁶ See note 10, *supra*.

²⁷ Rule 158, Con. Rul. Bul. No. 4 (April 6, 1909).

²⁸ Section 1, Act (as amended June 18, 1910).

the carrier from giving free transportation over its line to the household and personal effects of an employé, who is required to move from one place to another at the instance of or in the interest of the carrier by which he is employed.²⁹

A carrier gave free transportation to an employee and his household effects to the point where he was to be employed and later dismissed him: *Held*, That the Commission cannot require the carrier to return the household effects free of charge to the point from which they were first moved.³⁰

¶ E. OFFICERS AND EMPLOYEES OF RAILROAD RECEIVER.

Upon inquiry from a receiver duly appointed by the court to manage the property and assets of a railroad company: *Held*, That officers and employees engaged under the receiver in the operation of the railroad occupy the same position under the antipass provision of the Act as do the officers and employees of any other railroad.³¹

§ 599. Penalty of Employé of Carrier who delivers his Pass to a person not Authorized to Receive it, where such Person uses the same.

See *Section 757, post*.

§ 600. Free Passes to Household Servants.

A household servant when traveling with a member of a family entitled to a pass, is included within the term "family" as used in the Act to Regulate Commerce.³²

§ 601. Free Transportation to Necessary Agents or "Care-takers" of certain Shipments of Property and of certain Classes of Passengers.

¶ A. CARETAKERS OF LIVE STOCK, POULTRY AND FRUIT.

Section 1 of the Act provides that free transportation may be

²⁹ See note 15, *supra*.

³⁰ Rule 109, Con. Rul. Bul. No. 4 (Nov. 10, 1908).

³¹ Rule 165, Con. Rul. Bul. No. 4 (April 12, 1909).

³² Rule 92, Con. Rul. Bul. No. 4 (June 29, 1908); Rule 95, Con. Rul. Bul. No. 4 (June 30, 1908).

furnished "to necessary caretakers of live stock, poultry, fruit." This provision in the statute is construed to mean necessary caretakers of live stock, poultry, or fruit that is loaded and ready for movement, or the movement of which is actually contracted for or that is actually in transit, and may include free or reduced-fare transportation for the return of such necessary caretakers. This transportation may be in the form of free pass or reduced fare transportation, but in any event it must be the same for all under like circumstances and must be published in the tariff governing the transportation of the commodity. Tariff may provide that caretakers sent out to return with shipment, that is arranged for or that is in transit, will be required to pay full fare going, and such fare will be refunded if the person so sent does return as actual caretaker of the shipment for which he is sent. But a tariff rule which provides that if a person goes over the line with the intention of purchasing live stock and returns within a certain time with a certain number of cars of live stock that carrier will refund to him the fare paid on the outgoing trip is improper and unlawful.³³

An employee of a produce company was granted a pass for the purpose of going to a point on the carrier's line and returning as caretaker of a carload of bananas. He was unable to secure a return shipment. *Held*, That the carrier must collect a full fare.³⁴

¶ B. CARETAKERS OF PERISHABLE VEGETABLES.

The Commission is of the opinion that the term "fruit" in this connection includes perishable vegetables when shipped under conditions that render caretakers "necessary."³⁵ It will be noted that the Commission has emphasized the word "necessary."

The tariffs of a carrier included a refrigeration service, under rates named therein, on perishable freight. Upon in-

³³ Rule 102, Con. Rul. Bul. No. 4 (Oct. 13, 1908).

³⁴ Rule 1, Con. Rul. Bul. No. 4 (Nov. 4, 1907).

³⁵ See note 33, *supra*.

quiry whether the shippers or their agents might have free transportation to inspect the receiving of the cars: *Held*, That it does not appear that they are necessary caretakers within the meaning of Section 1 of the Act.³⁶

¶ C. CARETAKERS OF MILK.

The amendment of June 18, 1910, permits the giving of free transportation to caretakers of milk.³⁷

¶ D. CARETAKERS OF NEWSPAPER COMPANIES.

The so-called *caretakers* of newspaper companies, whose duty it is to assort newspapers on special newspaper trains and to make them up into packages for delivery as the train arrives at the several points along the line of the run, may not lawfully be granted free transportation that is permissible under the Act to Regulate Commerce to caretakers of certain other kinds of traffic specifically enumerated in the Act.³⁸

¶ E. CARETAKERS FOR BEES IN HIVES.

Upon inquiry from a classification committee the Commission agreed that tariffs may lawfully provide for free transportation of caretaker of bees in hives, which may be included in the term "live stock."³⁹

¶ F. CARETAKERS OF LIVE FISH.

The Commission has expressed the opinion that the term "live stock" may include live fish when shipped under conditions that render caretakers "necessary."⁴⁰

¶ G. NECESSARY AGENTS OR "CARETAKERS" OF PROPERTY TRANSPORTED FOR UNITED STATES, STATE OR MUNICIPAL GOVERNMENTS.

Section 22 of the Act provides, "that nothing in this Act

³⁶ Rule 171, Con. Rul. Bul. No. 4 (May 4, 1909).

³⁷ Act, Section 1 (as amended June 18, 1910).

³⁸ See note 14, *supra*.

³⁹ Rule 112, Con. Rul. Bul. No. 4 (Nov. 12, 1908).

⁴⁰ See note 20, *supra*.

shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal government, * * * and the necessary agents employed in such transportation.”

The Commission has held, that the words “and necessary agents employed in such transportation” modify the entire preceding part of the section, and that the necessary caretakers of property transported for the United States, State, or municipal governments, may legally be carried free or at reduced rates by carriers subject to the Act. The words “necessary agents” as used in this section are interpreted to mean those persons necessary to the safe and proper care of the property during the period of transportation, and may not properly be extended to cover any persons other than those who actually accompany such property and who are actually necessary to its care.⁴¹

¶ H. NECESSARY AGENTS OR CARETAKERS OF PROPERTY TRANSPORTED FOR CHARITABLE PURPOSES AND OF DESTITUTE AND HOMELESS PERSONS TRANSPORTED BY CHARITABLE SOCIETIES.

Section 22 of the Act provides, “That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for * * * charitable purposes * * * or the free carriage of destitute or homeless persons transported by charitable societies and the necessary agents employed in such transportation.”

The holding of the Commission under *Paragraph G, supra*. is equally and fully applicable here.⁴²

¶ I. NECESSARY AGENTS AND CARETAKERS OF PROPERTY TRANSPORTED TO OR FROM FAIRS AND EXPOSITIONS FOR EXHIBITION THEREAT.

Section 22 of the Act provides, “That nothing in this Act shall prevent the carriage, storage, or handling of property

⁴¹ Rule 150, Con. Rul. Bul. No. 4 (Feb. 11, 1909).

⁴² Ibid.

free or at reduced rates * * * from fairs and expositions for exhibition thereat * * * and the necessary agents employed in such transportation.”

The holding of the Commission under *Paragraph G, supra*, is equally and fully applicable here.⁴³

¶ J. MANNER IN WHICH PASSES TO CARETAKERS MUST BE ISSUED.

Passes to caretakers must be in the form of trip passes limited to the journey on which the person to whom the pass runs acts as a caretaker. It may also cover the return journey. Annual or time passes to caretakers are unlawful.⁴⁴

¶ K. CROSS REFERENCES IN RAILROAD AND EXPRESS TARIFFS.

When an express company provides in its tariff for free transportation for caretakers in charge of live stock, poultry, or fruit, and the railroad company over whose lines such express company operates provides in its tariff that such caretakers may be permitted to ride in passenger car; the tariff of the express company and that of the railroad company must give reference to each other.⁴⁵

¶ L. RETURN OF CARETAKERS.

A shipment of live stock moved between two points over two connecting lines. Upon inquiry by the delivering road, which had a through direct line between the two points, it was *held*, That it cannot free of charge return the caretakers over its own direct line through to the point of origin of the shipment.⁴⁶

§ 602. Free Transportation of Shippers and Dealers.

The free transportation of shippers and dealers between interstate points on account of interstate freight traffic furnished to the carrier is unlawful.⁴⁷

⁴³ Rule 150, Con. Rul. Bul. No. 4 (Feb. 11, 1909).

⁴⁴ Rule 37, Con. Rul. Bul. No. 4 (Feb. 4, 1908).

⁴⁵ Rule 179, Con. Rul. Bul. No. 4 (May 10, 1909).

⁴⁶ Rule 189, Con. Rul. Bul. No. 4 (June 14, 1909).

⁴⁷ *Milk Producers Protective Association v. D. L. & W. Rd. Co.*, 17 I. C. C. R. 92.

§ 603. Free and Reduced Rate Transportation to Clergymen and Persons engaged in Charitable Work and Their Families.

¶ A. IN GENERAL.

The Act to Regulate Commerce provided that carriers may lawfully give free transportation to ministers of religion, inmates of hospitals and charitable and eleemosynary institutions.⁴⁸

A clergyman does not lose his ministerial standing by reason of the fact that he leaves the pastorate for some other field of religious activity. A minister who becomes an editor of a church paper, instructor in a theological seminary, financial agent for a church or other religious institution, or who engages in other work which may fairly be regarded as religious in character, and who does not abandon his ministerial work, may legally be accorded special transportation privileges.⁴⁹

The Commission said: "The courts have been consistently liberal in giving construction to the words 'charitable' and 'eleemosynary,' and we see no reason for being unduly narrow in interpreting these words as found in the Act. A charitable institution is one which is administered in the public interest, and in which the element of private gain is wanting. This definition is broad enough to include hospitals, almshouses, orphanages, asylums, and missionary societies. This enumeration is not intended to be exclusive—it is only representative. It is important to note that such an institution does not necessarily lose its charitable character by reason of the fact that it is under the management of a particular denomination or sect, or because a charge is collected from some or all of those who enjoy its privileges. It is only necessary that it be conducted in the public interest and not for private gain."⁵⁰

Railroads have a right to grant special privileges to religious teachers as an act of charity.⁵¹

⁴⁸ See note 7, *supra*.

⁴⁹ In the Matter of Passes to Clergymen and persons engaged in Charitable Work, 15 I. C. C. R. 45.

⁵⁰ *Ibid*.

⁵¹ *Re Religious Teachers*, 1 I. C. R. 21.

¶ B. FAMILIES OF MINISTERS NOT ENTITLED TO FREE
TRANSPORTATION.

The provisions of the Act relative to the issuance of free or reduced fare transportation to ministers of religion do not apply to or include members of the families of ministers of religion.⁵²

§ 604. Free Transportation of Railway-Mail Service Employés.

The Commission construes the Act, so far as it relates to railway-mail service employés, as giving such employés the right to receive free transportation when on duty in their cars, or when traveling under orders from a superior officer.⁵³

The Commission, however, in making this rule stated that it does not undertake to say how far this portion of the Act to Regulate Commerce is modified or controlled as regards railway-mail service employees by other statutes or by contract between carriers and the Postoffice Department.

**§ 605. Free Transportation to Officers and Employés of
Subsidiary Corporations.**

Officers or employés of subsidiary corporations, which corporations engage in any employment for, or render any service to others than the carrier, do not come within the designated classes to whom free transportation may be given. However, the officers or employés of such subsidiary corporations may be granted free transportation when engaged on the business of the carrier.⁵⁴

**§ 606. Exchange of Free Transportation with Telegraph,
Telephone and Cable Companies.**

The Act to Regulate Commerce (*as amended June 18, 1910*) permits the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employés, and their families, of telegraph, telephone and cable employés

⁵² See note 15, *supra*.

⁵³ See note 10, *supra*.

⁵⁴ See note 10, *supra*.

and the officers, agents, employés and their families of other common carriers, subject to the provisions of the Act.⁵⁵

§ 607. Free and Reduced-Rate Transportation to Contractors and Men employed in the Construction and Improvement of Line of Carriers.

The Commission does not construe the law as preventing a carrier from giving free or reduced-rate carriage over its line to contractors for material, supplies, and men for use in construction, improvement, or renewal work on the line of that carrier; provided such arrangements for free or reduced-rate carriage are made a part of the specifications upon which the contract is based and of the contract itself.⁵⁹

§ 608. Reduced-Rate Transportation for Federal Troops and Marines.

The Commission announced that it is of the opinion that carriers, either by contract or bid or other arrangement with the War Department, may lawfully make special rates or fares for the movement of Federal troops when moved under orders and at the expense of the United States Government, and that the rates of fares so made need not be posted or filed with the Commission.⁶⁰

The lawfully published rates or fares for the transportation of the general public, in the opinion of the Commission, are to be regarded, however, as the maximum rates and fares that may lawfully be charged the Government for the movement of Federal troops.⁶¹

This ruling also governs similar transportation for the Naval and Marine services.

§ 609. Free Transportation to Officers of the Government, the Army and Navy, and their Families.

The provisions of the Act relative to the issuance of free or

⁵⁵ Act, Section 1 (as amended June 18, 1910).

⁵⁹ Rule 208, Con. Rul. Bul. No. 4 (Oct. 12, 1906).

⁶⁰ Rule 218, Con. Rul. Bul. No. 4 (May 27, 1907).

⁶¹ Ibid.

reduced-fare transportation do not admit of including therein officers of the Government, the Army, or the Navy, or members of their families.⁶²

§ 610. Free Transportation to Officers and Employés of News Companies.

The so-called *caretakers* of newspaper companies whose duty is to assort newspapers on special newspaper trains and to make them up into packages for delivery as train arrives at the several points along the line of the run, may not lawfully be granted free transportation, that is permissible under the Act to Regulate Commerce to caretakers of certain other kinds of traffic specially enumerated in the Act.⁶³

A commodity rate cannot be applied to the transportation of passengers or a passenger rate to the transportation of a commodity.⁶⁴

Therefore newspaper employees cannot lawfully be carried on special newspaper trains under a commodity rate established for the carriage of newspapers, or at any rate other than one specified in a regularly published schedule of passenger rates.⁶⁵

Officers and employés of news companies are not included within the designated classes to whom free transportation may lawfully be given.⁶⁶

§ 611. Free Transportation to Public Officials.

The defendant issued passes entitling the holders to free transportation over the lines of its system extending into the States of Maine, New Hampshire, Vermont and Massachusetts; there were several classes of persons who received the passes, among them, gentlemen long eminent in public service, higher officers of the States, prominent officials of the United States, members of the Legislature Committees of the above-named

⁶² See note 15, *supra*.

⁶³ See note 14, *supra*.

⁶⁴ *Ibid*.

⁶⁵ See note 14, *supra*.

⁶⁶ See note 10, *supra*.

States and persons whose good will was claimed to be important to the defendant: *Held*, That the giving of free transportation to such persons was a violation of the Act to Regulate Commerce.

Upon the facts found in this case, *Further held*, That the second section of the Act prohibits the giving of free transportation to the persons embraced within the above-named classes; that a carrier is bound to charge equally to all persons regardless of their relative individual standing in the community; that the words, "under substantially similar circumstances and conditions" relate to the nature and character of the service rendered by the carrier, and not to the official, social or business position of the passenger; that Section 22 of the Act is exceptive in character and only applies to the persons and subjects expressly specified therein.⁶⁷

The action of the defendant in granting to members of the City Council of New Orleans and the Clerk of that body, on account of their official positions, free transportation as passengers over all or some portion of its interstate lines, violates the Act to Regulate Commerce and is unlawful.⁶⁸

At the date of the above decisions such transportation was unlawful under the discrimination clause of the Statute; since the Hepburn Amendment of 1906, however, the giving of free or reduced-fare transportation is made unlawful by express prohibition.

§ 612. Reduced-Rate Transportation to Commercial Travelers.

A sale of mileage tickets to commercial travelers at a certain rate, and refusal to sell to other passengers except at a higher rate, is an unjust discrimination, within the meaning of the Act.⁶⁹

A release of liability by commercial travelers to the rail-

⁶⁷ In the Matter of Free Transportation by B. & M. R. Co., 3 I. C. R. 717.

⁶⁸ Harvey v. L. & N. R. Co. (1892), 5 I. C. C. R. 153; 2 I. C. R. 622; 3 I. C. R. 793; Case of B. & M. R. Co., *supra*, approved and followed.

⁶⁹ Larrison v. C. & G. T. R. Co. (1887), 1 I. C. C. R. 147; 1 I. C. R. 369.

road company does not constitute a good and sufficient consideration for such discrimination. Nor does the fact that they may influence business in favor of the road, etc.⁷⁰

Persons belonging to the class known as commercial travelers are not privileged to ride over railroads at lower rates than other persons, and to make a difference in this respect is unjust discrimination.⁷¹

This is true whether the tickets issued are mileage tickets or in some other form.⁷² Commercial travelers are not entitled to mileage tickets at lower prices than they are sold to the public generally.⁷³

§ 613. Reduced-Rate Transportation to Immigrants.

The railroad lines extending from New York City made a special rate for immigrants as a class and declined to grant the same rate to other persons. This special class of persons were given accommodations essentially different to those provided for others, in cars specially set apart for their use, and which were commonly made up into trains by themselves and returned to the seaboard from the western points empty. The Commission held that under the circumstances the rate in question was neither illegal nor wrongful and that the carriers were not guilty of unjust discrimination.⁷⁴

Regardless of the nature of the service rendered, it would seem that under a liberal construction of that portion of the Act which permits the giving of free transportation for charitable purposes,⁷⁵ such arrangement would be lawful.

§ 614. Free Transportation to Land Explorers and Settlers.

The Commission has decided that land explorers and settlers are not entitled to lower rates than the general public.

⁷⁰ *Larrison v. C. & G. T. R. Co.* (1887), 1 I. C. C. R. 147; 1 I. C. R. 369.

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Associated Wholesale Grocers of St. Louis v. Missouri Pacific R. Co.* (1887), 1 I. C. C. R. 156; 1 I. C. R. 393.

⁷⁴ *Savery & Co. v. N. Y. C. & H. R. R. Co.* (1888), 2 I. C. R. 210; 2 I. C. C. R. 338.

⁷⁵ *Ibid.*

The fact that it is very desirable for the common carrier to make sale of its lands is not a reason for discriminating in favor of explorers and settlers; the same reason would apply in case a company should desire to stimulate its freight traffic or any other branch of its business by the use of reduced rates or free transportation. The claim that the settlement of the Western Territories should be promoted by special facilities of transportation to immigrants, is a claim proper to be addressed to the legislative body, but not for consideration of the Commission in interpreting the statute; and moreover, the company is able, by excursion rates open to all, and by making allowances upon the price charged for its land of part or all of the cost of tickets, to perhaps accomplish the desired object to a sufficient extent without violating the law. The means, occupation or purpose of the parties are not proper considerations upon which to found discrimination among them.⁷⁶

At the date of the above decision such transportation was unlawful as in violation of the discrimination section of the Act; now such transportation is expressly forbidden by the amended statute.

§ 615. Free Transportation to Land and Immigration Agents.

Land and immigration agents, unless they are bona fide and actual employees of carriers subject to the Act to Regulate Commerce are not within the excepted classes specified in that statute; and providing transportation for such agents free or at reduced rates over the lines of such carrier is, and since the Act was originally passed has been unlawful.⁷⁷

§ 616. Free Transportation to Officers and Employés of Carriers not subject to the Act to Regulate Commerce.

¶ A. IN GENERAL.

Officers and employés of carriers not subject to the Act

⁷⁶ *Smith v. Northern Pacific R. Co.* (1887), 1 I. C. C. R. 208; 1 I. C. R. 611.

⁷⁷ *Complaint of Illinois Central R. R. Co.*, 12 I. C. C. R. 8; Rule 208, Con. Rul. Bul. No. 4 (Oct. 12, 1906).

to Regulate Commerce cannot lawfully be given free or reduced-rate transportation.⁷⁸

Where a carrier has no tariffs on file with the Commission, and does not acknowledge itself subject to the Commission's jurisdiction, the Commission will regard the issuance of passes to its officers or employés as unlawful, without, however, thereby passing upon the question of the jurisdiction of the Act over such carriers in so far as it may be necessary to assert such jurisdiction.⁷⁹

¶ B. STEAMSHIP LINES.

Officers and agents of steamship lines not subject to the Act cannot be lawfully given free transportation.⁸⁰

¶ C. TRANSFER, OMNIBUS OR BAGGAGE COMPANIES AND STAGE LINES.

In the decision of March 25, 1907, on the petition of the Frank Parmelee Company, the Commission held that a carrier subject to the Act to Regulate Commerce cannot lawfully give free transportation to the officers, agents, or employees of an omnibus or baggage express company, except as authorized in the Act, for baggage agents who meet passenger trains at some point near the larger cities and go through the trains to arrange for the transfer of passengers and their baggage.⁸¹

In the case referred to, the petitioner, the Frank Parmelee Company, being held not to be a common carrier subject to the Act to Regulate Commerce, could doubtless give free transportation on its omnibuses and baggage express wagons to whomsoever it wished, but the common carriers subject to the jurisdiction of the Act could not lawfully grant free transportation to the officers, agents or employés of the petitioner.⁸²

⁷⁸ See note 10, *supra*.

⁷⁹ *Ibid*.

⁸⁰ *Ibid*.

⁸¹ Rule 66, Tariff Circular 15-A.

⁸² In the Matter of Right of Railroad Companies to Exchange Free Transportation with Local Transfer and Baggage Express Companies, 12 I. C. C. R. 40.

§ 617. Free Transportation of Employés of Express Companies over Railroads.

A railway company may lawfully transport the men of an express company without reference to any tariff provision when employed in the business of the express company upon the line of the railway itself.

A railway company may not lawfully transport men of an express company when employed in the business of that company at points not on the line of railway.⁸³

§ 618. Reduced-Fare Transportation for the Deportation of Chinese not Permissible.

Special fares cannot lawfully be accorded for the deportation of Chinese to the ports for deportation even though the expense is paid by the Government.⁸⁴

§ 619. Free Transportation of Man taking Measurements of Employés of Carriers for Uniforms.

A carrier requires that certain of its employees shall wear uniforms made from goods of texture and color, and according to specifications prescribed by the carrier. The carrier employs a certain firm to make such uniforms for any and all of its employees at agreed-upon prices. A man is sent over the line to take the measures and orders of employés for such uniforms. The employé generally gives an order on the carrier for the amount of his order, which amount the carrier deducts in whole or in part from wages due the employee and the carrier pays the firm for the uniform.

The Commission was asked if the carrier may lawfully continue granting free transportation to man so taking measures and orders for uniforms: *Held*, That having its employees properly uniformed is a duty of the carrier in the interest of the carrier and of its patrons, and therefore the man so sent over its lines for the purpose named is, for that purpose and while engaged in that work, performing a duty devolving upon

⁸³ In the Matter of Contracts of Express Companies for the Free Transportation of their Men and Material over Railroads, 16 I. C. C. R. 246.

⁸⁴ Rule 107, Con. Rul. Bul. No. 4 (Nov. 10, 1908).

the carrier and may lawfully be given free transportation to the extent necessary for the performance of that duty, provided he does not in the same connection receive any orders from or sell any goods to persons who are not bona fide employees of that carrier.⁸⁵

§ 620. Miscellaneous Persons not lawfully entitled to Free Transportation.

Officers and employees of surety companies cannot be given free transportation.⁸⁶

Free transportation issued in the form of an annual pass to a person not in the regular and stated service of a carrier nor receiving any wages or salary under a contract of employment, but requested by him as compensation for throwing in its way what business he conveniently could; *Held*, To be illegal.⁸⁷

Upon inquiry from a car-lighting company it was *Held*, That its experts for the testing and observation of the performance of its lights on trains are not employees of the carrier, and are not therefore entitled to free transportation.⁸⁸

Neither may free transportation be granted to representatives of correspondence schools, agents of accident or life insurance companies, agents of oil or lubricating companies, etc.⁸⁹

§ 621. Excursion, Commutation and Mileage Tickets and Other Special Passenger Arrangements.

For consideration, see *Section 562, ante*.

§ 622. Party-Rate Tickets.

For consideration, see *Section 563, ante*.

§ 623. Use of State Passes in Interstate Journeys.

Passes granted to State railroad commissioners cannot lawfully be used in interstate journeys.⁹⁰

⁸⁵ Rule 134, Con. Rul. Bul. No. 4 (Jan. 7, 1909).

⁸⁶ See note 10, *supra*.

⁸⁷ *Slater v. Northern Pac. Rd. Co.* (1888), 2 I. C. C. R. 359; 2 I. C. R. 243.

⁸⁸ Rule 169, Con. Rul. Bul. No. 4 (April 13, 1909).

⁸⁹ See note 59, *supra*.

⁹⁰ Rule 35, Con. Rul. Bul. No. 4 (Dec. 3, 1908).

§ 624. Contracts Entered into prior to the Passage of the Act for Free Transportation based upon Moneyed or other Valuable Considerations.

See *Section 250, ante*.

§ 625. Validity of Stipulations in Railway Passes against Liability of Carrier for Injury.

The Supreme Court of the United States has sustained the validity of stipulations in railway passes against liability for injury, where the parties accept the passes with knowledge of such conditions.

A stipulation in a railway pass that the railway company shall not be liable to the user "under any circumstances, whether of negligence of agents or otherwise, for any injury to the person," violates no rule of public policy, and relieves the company from liability for personal injuries resulting from the ordinary negligence of its employees to one riding on the pass, who has accepted it with knowledge of its conditions.⁹¹

A stipulation in a free railway pass, requiring the user to assume the risk of injury due to the carrier's negligence, is binding on a person accepting the privilege, although notice of such stipulation may not have been brought home to her.⁹²

§ 626. Destruction by Carriers of the Records or Memoranda Relating to Passes.

The Commission has enjoined carriers against the destruction of records or memoranda touching the issuance of passes, and has ordered that the passes themselves coming into the hands of the carriers after use, must, until further order of the Commission be retained for a period of not less than five years.⁹³

§ 627. Unjust Discrimination in granting Free or Reduced-Rate Transportation.

See *Section 379, Paragraph E, ante*.

⁹¹ Northern Pacific Ry. Co. v. Adams et al., 192 U. S. 440; 48 L. ed. 513, 24 Sup. Ct. 408.

⁹² Boering v. Chesapeake Beach R. Co., 193 U. S. 442; 48 L. ed. 742, 24 Sup. Ct. 515.

⁹³ See note 10, *supra*.

CHAPTER XXXIV.

PASSENGER TARIFFS OR FARE SCHEDULES.

SECTION

628. Publication of Fares and Charges for Transportation.
629. Filing Tariffs, Supplements, Concurrences, etc., with the Interstate Commerce Commission.
630. Posting of Tariffs or Fare Schedules.
631. Jurisdiction of the Interstate Commerce Commission over the Publication, Posting and Filing of Tariffs or Fare Schedules.
632. Notice required for Publication of Fares and Changes therein.
633. Carriers prohibited from engaging in Transportation subject to the Act to Regulate Commerce unless they file and publish Fares and Charges thereon.
634. Different Kinds of Passenger Tariffs defined.
635. Tariffs must be printed.
636. Form and Size of Passenger Tariffs.
637. Information to be shown on the Title Page of every Passenger Tariff.
638. Information that Passenger Tariffs shall contain.
639. Amendments and Supplements to Tariffs.
640. Cancellation of Tariffs and Parts thereof.
641. Agents authorized to issue and File Tariffs and Supplements thereto.
642. Limiting Use of Terms "Common Points," "Southeastern Territory," and similar Terms.
643. Basing or Proportional Tariffs must be Specific.
644. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.
645. Index of Passenger Tariffs.
646. Tariffs containing Rail-and-Water or All-Water Rates.
647. Fare Schedules rejected by the Commission.
648. Receipt by and Filing of Tariffs with the Commission does not relieve Carriers from Liability for Violation of the Act or Regulations thereunder.
649. Fare prescribed in Commission's Decisions must be Promulgated in Tariffs and Commission Notified.
650. Circulars announcing Compliance with Orders of Court.
651. Maintenance of Relative Adjustment in issuing Tariffs to conform with Formal Orders of the Commission.

REGULATION—56.

SECTION

- 652. All State or other Fares used for Interstate Movements must be Posted and Filed.
- 653. All Local Tariffs should have I. C. C. Numbers and be Posted and Filed.
- 654. Fares governing Transportation for the United States Government need not be Published.
- 655. Rates of the Pullman Company.
- 656. Tariffs covering Mileage, Commutation, Excursion and Round-Trip Fares and Tickets.
- 657. Maxima Fares not Specific Fares.
- 658. Tariffs governing Use of Party-Fare Tickets.
- 659. Side Trips not specifically shown in a Through Tariff.
- 660. Concurrence by Carriers in Tariffs issued and filed by another Carrier or its Agent.
- 661. Letter of Transmittal accompanying Tariffs filed with the Commission.
- 662. Tariffs governing Movement of Passengers to and from Foreign Countries.

In considering the subject of passenger tariffs it should be noted that all the general principles applicable to freight tariffs are equally applicable to passenger tariffs and may be applied by analogy to such.

§ 628. Publication of Fares and Charges for Transportation.

¶ A. MANDATE OF THE ACT AS TO PUBLICATION OF FARES.

The Act to Regulate Commerce requires that every common carrier subject to its provisions shall publish schedules showing all the fares and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, or by water when a through route and joint rate have been established.¹

If no joint rate over the through route has been established, the several carriers in such through route shall print, as aforesaid, the separately established fares and charges applied to the through transportation.²

¹ Act to Regulate Commerce. Section 6.

² Ibid.

¶ B. JOINT TARIFFS MUST SPECIFY NAMES OF PARTICIPATING CARRIERS.

The Act requires the names of the several carriers which are parties to any joint tariff to be specified therein.³

§ 629. Filing Tariffs, Supplements, Concurrences, etc., with the Interstate Commerce Commission.

¶ A. MANDATE OF THE ACT AS TO FILING OF FARE SCHEDULES WITH THE COMMISSION.

The Act to Regulate Commerce provides that every common carrier subject to its provisions shall file with the Commission and print and keep open to public inspection, schedules showing all the fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, or by water when a through route and joint fare have been established.⁴

If no joint fare over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established fares and charges applied to the through transportation.⁵

¶ B. CONCURRENCE OF PARTICIPATING CARRIERS.

The concurrence of every carrier participating in the tariffs as stated in the preceding paragraph must be on file with the Commission or accompany the tariff or supplement.⁶ See *Section 661, post*.

¶ C. FILING BY PROPER OFFICER OR DESIGNATED AGENT.

Tariffs and supplements thereto shall be filed with the Commission by proper officer of the carrier or by an agent designated to perform that duty.⁷

³ Act to Regulate Commerce. Section 6.

⁴ Ibid.

⁵ Ibid.

⁶ Rule 41, Tariff Circular 17-A.

⁷ Ibid.

¶ D. TWO COPIES OF ALL TARIFFS MUST BE FILED WITH THE COMMISSION.

Common carriers and agents are directed, in filing schedules in compliance with the statute, to transmit two (2) copies of each tariff, supplement, or other schedule of fares or regulations, for use of the Commission, both copies to be included in one package and under one letter of transmittal.⁸

¶ E. HOW TARIFFS FILED WITH THE COMMISSION MUST BE ADDRESSED.

All tariffs sent for filing with the Interstate Commerce Commission must be addressed "Interstate Commerce Commission, Bureau of Tariffs, Washington, D. C."⁹

¶ F. TARIFFS MUST BE DELIVERED TO THE COMMISSION FREE FROM ALL CHARGES OR CLAIMS FOR POSTAGE.

No tariff or supplement will be accepted by the Commission for filing unless it is delivered to the Commission, free from all charges or claims for postage.¹⁰

¶ G. TARIFFS MUST BE DELIVERED TO THE COMMISSION WITHIN FULL STATUTORY TIME.

All tariffs or supplements must be delivered to the Commission within the full thirty days required by law before the date upon which such tariffs or supplements are stated to be effective. No consideration will be given to or for the time during which a tariff or supplement may be held at the Post Office Department because of insufficient postage.¹¹

For tariffs and supplements issued on short notice under special permission of the Commission and short time excursion tariffs, full thirty days' notice is not required, but literal compliance with the requirements for notice of such tariffs or in any permission granted by the Commission will be exacted and in accord with the policy and practice above outlined.¹²

⁸ Rule 41, Tariff Circular 17-A.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¶ H. DISPOSITION OF TARIFFS RECEIVED BY COMMISSION TOO LATE TO GIVE STATUTORY NOTICE.

A tariff or a supplement that is received by the Commission too late to give the Commission the full thirty days' notice required by law will be returned to sender, and correction of the neglect or omission can not be made which takes into account any time elapsing between the date upon which such tariff or supplement was received and the date of attempted correction.¹³ In other words, when a tariff or a supplement is issued and as to which the Commission is not given the statutory notice, it is as if it had not been issued, and full statutory notice must be given of any reissue thereof.¹⁴

§ 630. Posting of Tariffs or Fare Schedules.

¶ A. MANDATE OF THE ACT AS TO POSTING OF FARE SCHEDULES.

The Act to Regulate Commerce requires that every common carrier subject to its provisions shall keep open to public inspection schedules showing all the fares and charges for transportation on its own route and between points on its own route and points on the route of any other carrier by railroad, or by water when a through route and joint rate have been established.¹⁵

If no joint rate over the through route has been established, the several carriers in such through route shall keep open to public inspection, as aforesaid, the separately established fares and charges applicable to the through transportation.¹⁶

Copies of such schedules are required by the Act to be kept posted for the use of the public in two public and conspicuous places in every depot, station or office of such carrier where passengers are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.¹⁷

¹³ Rule 41, Tariff Circular 17-A.

¹⁴ Ibid.

¹⁵ See note 1, *supra*.

¹⁶ Ibid.

¹⁷ Ibid.

The above provisions apply to all traffic, transportation and facilities subject to the Act.¹⁸

¶ B. RULES GOVERNING THE POSTING OF TARIFFS AT STATIONS.

See *Section 460, ante*, for full consideration.

§ 631. Jurisdiction of the Interstate Commerce Commission over the Publication, Posting and Filing of Tariffs or Fare Schedules.

See *Section 459, ante*, for full consideration.

§ 632. Notice required for Publication of Fares and Changes therein.

¶ A. STATUTORY NOTICE.

Section 6 of the Act to Regulate Commerce as changed by the Hepburn Amendment of 1906, provides that:

“No changes shall be made in the fares and charges, or joint fares and charges, which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days’ notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule *then in force* and the time when the changed fares or charges will go into effect; and the proposed changes shall be shown by *printing new schedules*, or shall be plainly indicated upon the schedule in force at the time and kept open to public inspection.”

¶ B. POWER OF COMMISSION TO ALLOW CHANGES ON LESS THAN STATUTORY NOTICE.

The Act authorizes the Commission in its discretion and for good cause shown to allow changes upon less than thirty days’ notice, either in particular instances or by a general order applicable to special or peculiar circumstances and conditions.¹⁹

The Commission in pursuance of this authority has not only permitted changes in fares on less than statutory notice in par-

¹⁸ Rule 41, Tariff Circular 17-A.

¹⁹ *Ibid.*

ticular instances, but has issued general orders applicable to special conditions and circumstances, as will be noted from the following paragraphs and elsewhere.

§ 633. Carriers prohibited from engaging in Transportation subject to the Act to Regulate Commerce unless they file and publish Fares and Charges thereon.

No carrier is permitted to engage in the transportation of passengers, as defined by the Act, unless the fares and charges upon which the same is transported by said carrier have been filed and published in accordance with the provisions of the Act.²⁰

§ 634. Different Kinds of Passenger Tariffs defined.

¶ A. JOINT TARIFFS.

Joint tariffs are those which contain or are made up from fares that extend over the lines of two or more carriers and that are made by agreement between such carriers.²¹ They apply to traffic between points on the lines of two or more carriers.²²

¶ B. LOCAL TARIFFS.

Local tariffs apply to traffic between points on the lines of the issuing carrier.²³

¶ C. INTERDIVISION TARIFFS.

Interdivision tariffs apply only to traffic between points on different divisions of the lines of the issuing carrier, except that under proper concurrences, shown in the tariff, interdivision fares may be included to and from points on directly connecting subsidiary lines. When this is done, the title of the tariff must be "Interdivision tariff of Ry. and its subsidiary lines," and each such subsidiary line must be shown in the list of participating carriers, together with the form and

²⁰ Act to Regulate Commerce. Section 6.

²¹ Tariff Circular 17-A.

²² Rule 29, Tariff Circular 17-A.

²³ Ibid.

number of its concurrence.²⁴ The use of interdivision tariffs is optional with carriers.²⁵

¶ D. BASING TARIFFS.

Basing tariffs contain fares to or from a certain specified basing point or points where no specific through or joint fare exists, together with definite rules and regulations as to the use and application of such basing fares.²⁶

§ 635. Tariffs must be printed.

The statute requires that all schedules of fares shall be plainly printed in large type.²⁷

All passenger tariffs must be printed on hard calendered paper of good quality from type of size not less than 6-point full face. Stereotype, planograph, or other printing-press process may be used. Alterations in writing or erasures must not be made in tariffs before filing. Reproductions by hectograph or similar process, typewritten sheets, or proof sheets must not be used for posting or filing except in preparation of tariffs covering excursion fares that are effective for not exceeding ten consecutive selling dates or for excursions limited to thirty days or less.²⁸

§ 636. Form and Size of Passenger Tariffs.

¶ A. JOINT AND BASING TARIFFS.

Joint and basing tariffs must be in book, sheet, or pamphlet form, and of size 8 by 11 inches. Loose-leaf plan may be used so that changes can be made by reprinting and inserting a single leaf.²⁹

¶ B. LOCAL TARIFFS.

Local tariffs may be in book form, not larger than 8 by 11

²⁴ Rule 29, Tariff Circular 17-A.

²⁵ Ibid.

²⁶ Ibid.

²⁷ See note 20, *supra*.

²⁸ Rule 28, Tariff Circular 17-A.

²⁹ Rule 30, Tariff Circular 17-A.

inches or in single-sheet form of size desired by the issuing carrier.³⁰

Local tariffs may be in one or more books or pamphlets and must show the exact fare from each point to each other on the lines of the issuing carrier. Fares to and from newly established points may be shown in supplement to tariff as "same as to or from next more distant point to or from which fare is shown in tariff," or "same as to nearest point to or from which fare is shown in tariff," or by showing fare to or from a nearby point or junction and providing that fares will be made up on that combination or base. If desired, certain of the fares which appear in local tariffs may be repeated in interdivision or joint tariffs under specific provision that as shown in such interdivision or joint tariff they may be used only for basing or through fare construction purposes, and may not be used as local fares.³¹

Loose-leaf plan may be used so that changes can be made by reprinting and inserting a single leaf.³²

¶ C. INTERDIVISION TARIFFS.

Interdivision tariffs may be in book form, not larger than 8 by 11 inches, or in single-leaf form of size desired by the issuing carrier. Loose-leaf plan may be used so that changes can be made by reprinting and inserting a single leaf.³³

Interdivision tariffs shall show:³⁴

(a) The exact fares between each point on one division and each point on the other division or divisions to which the tariff applies; or

(b) The exact fares between each point on a division and the principal points on the other division or divisions to which the tariff applies, together with explicit rules and bases from which to determine the fares to and from each of the less important points on the division or divisions to which the tariff applies and which are not named in the tariff.

³⁰ Rule 30, Tariff Circular 17-A.

³¹ Rule 31, Tariff Circular 17-A.

³² See note 29, *supra*.

³³ *Ibid*.

³⁴ Rule 32, Tariff Circular 17-A.

§ 637. Information to be shown on the Title-Page of every Passenger Tariff.

The Commission has ruled that the title-page of every tariff shall show:³⁵

¶ A. NAME OF CARRIER OR AGENT.

Name of issuing carrier, carriers, or agent.³⁶

¶ B. I. C. C. NUMBER AND CANCELLATIONS.

I. C. C. number of tariff in bold type on upper right-hand corner, and immediately thereunder, in smaller type, the I. C. C. number or numbers of tariffs and supplements canceled thereby. If, however, the number of canceled tariffs is so large as to render it impracticable to thus enter them, they must be shown immediately following table of contents, and specific reference to such list must be entered on title-page immediately under the number of the tariff. Serial numbers of carrier may, if desired, be entered below the upper marginal line of the title-page. Separate serial I. C. C. numbers will be used for freight and passenger tariffs.³⁷

¶ C. KIND OF TARIFF.

Whether tariff is local, interdivision, basing, or joint.³⁸

¶ D. TERRITORY.

The territory or points from and to which the tariff applies, briefly stated.³⁹

¶ E. DATES.

Date of issue and date effective.⁴⁰

¶ F. EXPIRATION NOTICE.

Any tariff may be changed on statutory notice of thirty days, or under special permission from the Commission, upon shorter

³⁵ Rule 33, Tariff Circular 17-A.

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

notice. Therefore, a provision in a tariff that the tariff, or any part of it, will expire upon a given date, is not a guaranty that the tariff, or such part of it, will remain effective until that date. The Commission considers such expiration notices undesirable, as many complications have arisen through their being overlooked. Such provision, if used, must be understood to mean that the tariff, or specified part of it, will expire upon the date named unless sooner canceled, changed, or extended in lawful way.⁴¹ On such tariffs the term "Expires . . . , unless sooner canceled, changed, or extended, must be used."⁴²

¶ G. NOTICE OF SUPPLEMENTS.

On the upper left-hand corner (excepting tariffs issued in loose-leaf form, and tariffs containing round-trip excursion fares) the words: "Only one supplement to this tariff may be in effect at any time." On tariffs issued in loose-leaf form and on tariffs containing round-trip excursion fares, the words: "No supplement will be issued to this tariff except for the purpose of canceling the tariff."⁴³

On a tariff which provides for supervision and restoration of rail-and-water fares, the following exception should be made in connection with the above notations: "except as provided for in rule . . . [or item] page . . . , of this tariff."⁴⁴

¶ H. STATUTORY NOTICE OR AUTHORITY FOR SHORTER NOTICE MUST BE SHOWN.

On a tariff which provides for suspension and restoration of rail-and-water rates, the following exception should be made in connection with the above notations: "except as provided for in rule . . . [or item . . .], page . . . , of this tariff."⁴⁵

The Act to Regulate Commerce requires that all changes in fares, or in rules that affect fares, shall be filed with the Commission at least thirty days before the date upon which they

⁴¹ Rule 33, Tariff Circular 17-A.

⁴² See note 34, *supra*.

⁴³ See note 35, *supra*.

⁴⁴ *Ibid*.

⁴⁵ *Ibid*.

are to become effective. Manifestly it is impossible for the Commission to check the items in tariffs to determine whether or not the statutory notice has been given. The title-page of every tariff or supplement must show full thirty days' notice, except as otherwise provided.⁴⁶

On every tariff or supplement that is issued on less than thirty days' notice by permission from or order or regulation of the Commission, notation that it is issued under special permission or order of the Interstate Commerce Commission, No. . . . , of [date] or by authority of Rule , Tariff Circular 17-A, or by authority of decision of the Commission in case No.

¶ I. NOTATION ON EXCURSION TARIFF.

On every excursion tariff issued notation, "Issued under authority of Rule 52, Tariff Circular 17-A."⁴⁷

¶ J. OFFICER ISSUING.

Name, title, and address of officer by whom tariff is issued.⁴⁸

§ 638. Information that Passenger Tariffs shall contain.

The Commission has rules that passenger tariffs shall contain the following information and in the order named:

¶ A. TABLE OF CONTENTS.

A full and complete statement, in alphabetical order, of the exact location where information under general headings, by subjects, will be found, specifying page or item numbers. If a tariff contains so small a volume of matter that its title-page or its interior arrangement plainly discloses its contents, the table of contents may be omitted.⁴⁹

¶ B. NAMES OF PARTICIPATING CARRIERS.

Names of issuing carriers, including those for which joint agent acts under power of attorney, and names of carriers par-

⁴⁶ See note 6, *supra*.

⁴⁷ See note 35, *supra*.

⁴⁸ *Ibid*.

⁴⁹ Rule 34, Tariff Circular 17-A.

ticipating under concurrences, both alphabetically arranged. If there be not more than ten participating carriers their names may be shown on the title-page of the tariff.

¶ C. SHOW CONCURRENCE FORMS AND NUMBERS.

The form and number of the power of attorney or concurrence by which each carrier is made a party to the tariff must be shown.⁵⁰

¶ D. EXCURSION-FARE TARIFFS MUST SHOW, OR REFER TO, LIST OF PARTICIPATING CARRIERS.

Tariffs containing round-trip excursion fares and instructions as to sale and use of tickets thereunder must show a full list of carriers, parties thereto, or must give reference by I. C. C. numbers to the tariffs on which such excursion fares are based; must bear notation that the same carriers that are parties to the tariffs so referred to are, under the authorities and concurrences there shown, parties to the excursion-fare tariffs, and provision that tickets must not be sold thereunder via the line of any carrier that is not specified as party to the tariff or tariffs so referred to.⁵¹

¶ E. INDEX OF STATIONS.

Alphabetically arranged and complete index of stations from which the tariff applies, and alphabetically arranged and complete index of stations to which the tariff applies, together with the name of State in which located. If there be not more than twelve points of origin and twelve points of destination, they may, if practicable, be shown on title-page of tariff.⁵²

¶ F. GEOGRAPHICAL DESCRIPTION OF APPLICATION OF TARIFF.

Geographical description of tariff may be used only when the tariff applies from or to all stations in one or more States or Territories, or when it applies to all points in a State or Territory except those specified. But such list of exceptions

⁵⁰ Rule 34, Tariff Circular 17-A.

⁵¹ Ibid.

⁵² Ibid.

for a State may not include more than 30 points. For example, a tariff may state that it applies from all points in New York, Pennsylvania, and New Jersey, and from all points in Delaware except (*here give alphabetical list of excepted points*), and from the following points in Ohio (*here give alphabetical list of Ohio points*).⁵³

¶ G. TRAFFIC TERRITORIAL OR GROUP DESCRIPTION OF APPLICATION OF TARIFFS.

Traffic territorial or group descriptions may be used to designate points to or from which fares named in the traffic apply, provided a complete list of such points arranged by traffic territories or groups is printed in the tariff or specific reference is given to the I. C. C. number of the issue that contains such list. In this list the stations on each line of road must be grouped together alphabetically and under the name of the road.⁵⁴

¶ H. IF POINTS OF ORIGIN AND DESTINATION ARE ARRANGED ALPHABETICALLY, INDEX OF STATIONS MAY BE OMITTED.

If in naming fares in the tariff, points of origin and of destination are arranged alphabetically, or alphabetically by States or roads, alphabetical index of stations may be omitted.

¶ I. REFERENCE MARKS AND ABBREVIATIONS

Explanation of reference marks and technical abbreviations used in the tariff.⁵⁵

¶ J. ROUTING UNDER TARIFF.

If the fares apply via more than one route or gateway, the route or gateway shall be shown in connection with the fare, or the different routes shall be specified and each route be given a number, in which event the routing to each point of destination named in the tariff will be shown by placing opposite thereto, in a column headed "Route," the proper route number or numbers.⁵⁶

⁵³ Rule 34, Tariff Circular 17-A.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

¶ K. EXPLANATION OF FARES AND RULES.

Such explanatory statement in clear and explicit terms regarding the fares and rules contained in the tariff as may be necessary to remove all doubt as to their proper application.⁵⁷

¶ L. RULES GOVERNING THE TARIFF.

Rules and regulations which govern the tariff, the title of each rule and regulation to be shown in bold type. Under this head all of the rules, regulations, or conditions which in any way affect the fares named in the tariff shall be entered, except that a special rule applying to a particular fare shall be shown in connection with and on the same page with such fare.⁵⁸

¶ M. NO RULE SHALL AUTHORIZE SUBSTITUTING FARE FOUND IN ANY OTHER TARIFF.

No rule or regulation shall be included which in any way or in any terms authorizes substituting for any fare named in the tariff a fare found in any other tariff, or made up on any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part.⁵⁹

¶ N. GENERAL RULES REGARDING STOP-OVERS AND BAGGAGE.

These rules shall include the general rules governing stop-over privileges and the general baggage regulations, and also schedule of excess-baggage rates, unless such excess-baggage rates are shown in tariff in connection with the fares.⁶⁰

¶ O. TARIFF RULES AND REGULATIONS FILED AND POSTED MAY BE REFERRED TO IN OTHER SCHEDULES GOVERNED THEREBY.

A carrier or an agent may publish, under I. C. C. number, post and file a tariff publication containing the rules and regulations which are to govern certain fare schedules, and such publication may be made a part of such fare schedules by the

⁵⁷ Rule 34, Tariff Circular 17-A.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

specific reference "Governed by rules and regulations shown in I. C. C. No."⁶¹

A fare schedule may in like manner refer to another schedule for the governing rules and regulations.⁶²

A schedule or a publication so referred to must be on file with the Commission and be posted at every place where a schedule that refers to it is posted.⁶³

¶ P. THE FARES.

The fares, explicitly stated in cents or in dollars and cents, together with the names of the places from and to which they apply, all arranged in a simple and systematic manner. Complicated or ambiguous plans or terms must be avoided.⁶⁴

¶ Q. FARES IN CONNECTION WITH STAGE ROUTES, ETC.

The Commission has decided that a joint fare may not be made with a carrier that is not amenable to the Act. Therefore tariffs containing fares applying in connection with stage routes or fares which include hotel accommodations or admission to entertainments must separately show the carrier's portion of such fares, and such portions of fares must be alike to all, regardless of whether or not passenger purchases ticket for stage line, or desires the other accommodations mentioned.⁶⁵

¶ R. FARES FOR EXCURSIONS.

Tariffs naming fares for excursions may state such fares in such terms as "One first-class fare for the round trip," "One first-class fare and a third for the round trip," "One first-class fare plus dollars for the round trip," and must give specific reference by I. C. C. number or numbers to the tariff or tariffs containing such first-class fares.⁶⁶

¶ S. ARRANGEMENT OF POINTS IN LOCAL TARIFFS.

In naming fares in local passenger tariffs points will be

⁶¹ Rule 34, Tariff Circular 17-A.

⁶² Ibid.

⁶³ Ibid.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

arranged geographically, and the points on main line shall appear first in order, followed by points on branch lines diverging from main line. The points on a branch line will be separated from main line and other branch-line points by a rule. The point of divergence from main line shall be shown at the top of the branch-line points, but fares to and from such point of divergence need not be repeated.

Head-Line Points.

Points shown at the top of column of fares will be known as "head-line points," and each column will be designated by a letter, or, if necessary, by a combination of letters or of letters and numerals.

Side-Line Points.

Points shown at the side of the columns of fares will be known as "side-line points," and will be numbered consecutively. The alphabetical index of points in the tariff will show the location of fares to or from each point by head-line letters and side-line numbers.⁶⁷

¶ T. ARRANGEMENT OF POINTS IN INTERDIVISION TARIFF.

Interdivision tariffs may be arranged geographically or alphabetically, but if arranged geographically the rule in *paragraph F, supra*, will be followed.⁶⁸

§ 639. Amendments and Supplements to Tariffs.

¶ A. AMENDMENTS AND SUPPLEMENTS DEFINED AND FORM THEREOF.

A change in a tariff shall be known as an amendment and, excepting amendments to tariffs issued in loose-leaf form, and changes in tariffs covering round-trip and excursion fares, shall be printed in a supplement to the tariff which it amends, specifying such tariff by its I. C. C. number. The supplement shall be reissued each time an amendment is made and shall always contain all the amendments to that tariff that are in

⁶⁷ Rule 35, Tariff Circular 17-A.

⁶⁸ Ibid.

force. Supplements to a tariff shall be numbered consecutively as supplements to that tariff and not be given new or separate I. C. C. numbers. An amended item must always be printed in supplement in its entirety as amended.⁶⁹

¶ B. PARTICIPATING CARRIERS.

A supplement shall contain either a list of carriers participating therein, or shall state that the list of participating carriers is "as shown in tariff," or "as shown in tariff, except [*here show alphabetically all additions to and eliminations from the original list that are affected by the supplement, or that have been affected by previous supplements.*]"⁷⁰

¶ C. SHOW EFFECTIVE DATE OF REISSUED ITEMS AND I. C. C. REFERENCE.

A tariff which contains reissued items brought forward from a previous issue which has not been in effect thirty days, or a supplement which brings forward reissued items without change from a former supplement or tariff, must not bear notation "Effective at once, except as noted," but instead must bear the notation "Effective except as noted in individual items." Example: "Issued, 19., effective 19., except as noted in individual items." Reissued items brought forward without change must show in conspicuous form and convenient manner the following: "Reissue [*in black-face type*]; effective [*date upon which item became effective*] in I. C. C. No." or "in Supplement No. to I. C. C. No." When the reissued item became effective in a former supplement to the same tariff the I. C. C. number may be omitted, but the supplement number must be given.⁷¹

Items reissued from publications that were on file prior to June 1, 1907, may show last date and reference prior to June 1, 1907.⁷²

⁶⁹ Rule 38, Tariff Circular 17-A.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

¶ D. NUMBER OF SUPPLEMENTS IN EFFECT AT ONE TIME.

There shall at no time be more than one supplement in effect to any tariff and such effective supplement to a tariff of 20 or more pages, may not contain more than 20 per centum of the number of pages in the tariff. Supplement to a tariff of less than 20 pages may not contain more than two pages.⁷³

¶ E. SUPPLEMENT EXCEEDING LIMIT SUBJECT TO REJECTION.

A supplement to a tariff which has the effect of exceeding the above-indicated number of pages of supplemental matter to that tariff will be subject to rejection when offered for filing. The reissuance of a tariff will cancel supplement to such tariff.⁷⁴

¶ F. NO SUPPLEMENT TO EXCURSION-FARE, COMMUTATION-FARE, OR MILEAGE TARIFFS.

No supplement may be issued to any excursion-fare tariff that is issued on less than statutory notice except for the purpose of canceling the tariff.⁷⁵

¶ G. AMENDMENTS TO LOOSE-LEAF TARIFFS. NO SUPPLEMENT.

All changes in and additions to tariffs issued in loose-leaf form must be made by reprinting both pages of the leaf upon which change is made. Such pages must not be given supplement numbers but must be designated "First revised page ..," "Second revised page ..," etc., must show the I. C. C. number of the tariff, the issued and effective dates, and the name, title, and address of officer by whom issued. Changes or additions must be noted by proper reference marks. When no change or addition is made in one of the pages reprinted it must bear notation "No change in this page."⁷⁶

¶ H. SUPPLEMENTS TO PERIODICAL TARIFFS.

If a tariff provides that it will be reissued periodically at specified times, not more than six months apart, and the life

⁷³ Rule 38, Tariff Circular 17-A.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

of the tariff does not exceed six months, and such provision is strictly observed, the supplement to such tariff may contain all amendments thereto between such specified dates for reissue, without limit as to size. Such tariff must bear on upper left-hand corner of title page notation, "This tariff will be reissued effective on or before, 19..."⁷⁷

¶ I. SUPPLEMENT TO TARIFF THAT IS FILED AND NOT YET EFFECTIVE.

If a tariff is filed on statutory notice canceling another tariff, and after such filing and prior to the effective date of such new tariff a supplement to the tariff to be so canceled should be lawfully issued, fares in that supplement could not continue in effect for the thirty days required by law because the cancellation of the tariff also cancels supplements to it. In such a case supplement containing changes not included in the tariff that is to become effective may be issued as supplement both to the tariff in effect and to the tariff on file that will effect such cancellation, and be given both I. C. C. numbers. In other words, such issue must be a supplement to each of the tariffs, and copies must be filed accordingly. A supplement issued under this Rule containing reissued items shall note in connection with each of such items, in addition to the date effective as required by the Rule, that the reissued items expire on the date at which the new tariff becomes effective, and that the new tariff will apply in lieu thereof; and such reissued items must not be brought forward in subsequent supplement to the new tariff. Such supplement may not contain any changes except those lawfully made by supplement to the tariff which is to be canceled by the tariff that has been filed and that is also so supplemented; and no other kind of supplement to a tariff that is on file and not yet effective may be made effective within thirty days from the effective date of the tariff without special permission.⁷⁸

The provisions of *Paragraph D* of this Rule as to the number

⁷⁷ Rule 38, Tariff Circular 17-A.

⁷⁸ *Ibid.*

of supplements to a tariff that may be in effect at any time, and the volume of supplemental matter they may contain must be observed in connection with supplement issued under this paragraph.⁷⁹

¶ J. WITHDRAWAL AND ADOPTION OF TARIFFS WHEN ONE CARRIER IS ABSORBED BY ANOTHER CARRIER.

In case of change of ownership or control of a carrier the carrier whose line is absorbed, taken over, or purchased by another carrier shall unite with that other carrier in common supplements to the tariffs on file with the Commission, on the one hand withdrawing and on the other hand accepting and establishing such tariffs and all effective supplements thereto. Such common supplements shall be executed jointly by the traffic officers of both the old and new carriers, shall be numbered consecutively as supplements to the tariffs to which they are directed, and may be made effective on five days' notice to the public and the Commission by noting thereon reference to this Rule. Amendments to such tariffs must thereafter be filed in consecutively numbered supplements thereto until the tariffs are reissued. New tariffs reissuing or superseding these shall be numbered in the I. C. C. series of the new carrier.⁸⁰

¶ K. WITHDRAWAL AND ADOPTION OF TARIFFS WHEN A ROAD OR PORTION THEREOF IS TRANSFERRED TO ANOTHER COMPANY, OR ITS NAME IS CHANGED.

When a road or a part of a road is transferred from the operating control of one company to that of another, or when its name is changed, the existing tariffs issued by the company that surrenders control must be withdrawn by it and adopted by the company assuming control, as provided in the preceding paragraphs.⁸¹

⁷⁹ Rule 38, Tariff Circular 17-A.

⁸⁰ Ibid.

⁸¹ Ibid.

¶ L. ADOPTION OF TARIFFS ISSUED BY OTHER CARRIERS OR JOINT AGENTS, AND OF CONCURRENCES, POWERS OF ATTORNEY, ETC., FILED BY OLD CARRIER.

As to tariffs issued by other carriers or joint agents under concurrences or powers of attorney granted by the old carrier or company, the new carrier or company shall, if it intends to use such tariff publications and rates, issue, file, and post, with I. C. C. numbers, an adoption notice, substantially as follows:⁸²

The [*name of carrier*] hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs, rules, notices, concurrences, traffic agreements, divisions, authorities, powers of attorney, or other instruments whatsoever, filed with the Interstate Commerce Commission by the [*name of old carrier*] prior to [*date*] the beginning of its possession. By this tariff it also adopts and ratifies all supplements or amendments to any of the above tariffs, etc., which it has heretofore filed with said Commission.⁸³

This notice may be made effective and be filed on immediate notice.⁸⁴

¶ M. ADOPTION NOTICE FILED BY RECEIVER.

Similar adoption notice must be filed by a receiver when assuming possession and control of a carrier's lines.⁸⁵

¶ N. CONCURRENCES AND POWERS OF ATTORNEY OF OLD CARRIER MUST BE REPLACED BY THOSE OF NEW COMPANY.

Concurrences and powers of attorney so adopted must, as soon as possible, be replaced and superseded by new concurrences and powers of attorney issued by and in the name of the new carrier or company, and in each instance canceling the concurrence or power of attorney superseded.⁸⁶

The carrier surrendering control of the property has no lawful right to abandon its tariffs except on lawful notice, and when it surrenders control of the property it surrenders all right to publish rates or fares applicable thereto except under

⁸² Rule 38, Tariff Circular 17-A.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Ibid.

proper authority from the carrier or company to whose control the property passes. The public has a right to available and lawfully applicable rates and fares over that property.⁸⁷

§ 640. Cancellation of Tariffs and Parts thereof.

¶ A. TARIFF OR SUPPLEMENTS TO TARIFF SHALL SPECIFY CANCELLATIONS.

If a tariff or supplement to a tariff is issued which conflicts with a part of another tariff or supplement to a tariff which is in force at the time, and which is not thereby canceled in full, it shall specifically state the portion of such other tariff which is thereby canceled, and such other tariff shall at the same time be correspondingly amended, effective on the same date, in the regular way; and such supplement to such tariff so amended shall be filed at the same time and in connection with the tariff which contains the new fares.⁸⁸

¶ B. CANCELLATION MUST BE BY AUTHORIZED AGENT OR BY CARRIER THAT ISSUED THE TARIFF CANCELED.

An agent who acts under power of attorney is fully authorized to act for the carriers that have named him their agent and attorney, and, therefore, it is permissible for him to cancel by his tariffs issues of such principals. A carrier may not by its individual tariff cancel, amend, or modify a tariff by a duly authorized agent, except when corresponding amendment to such agent's tariff is filed at the same time, and as per *Paragraph A, supra*.⁸⁹

¶ C. CONCURRENCE DOES NOT CONFER AUTHORITY TO CANCEL.

A concurrence does not confer authority upon either carrier or agent to cancel tariffs of concurring carrier, and, therefore, tariffs issued under concurrences may not assume to cancel, or carry notation of cancellation of, tariffs of and issued by concurring carriers. Such cancellations must be made by the carrier that issued the tariff that is to be canceled.⁹⁰

⁸⁷ Rule 38, Tariff Circular 17-A.

⁸⁸ Rule 37, Tariff Circular 17-A.

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

¶ D. CANCELLATION NOTICE MUST BE BY SUPPLEMENT.

If a tariff is canceled with the purpose of canceling entirely the fares named therein, or when, through error or omission, a later issue failed to cancel the previous issue and a tariff is canceled for the purpose of perfecting the records, the cancellation notice must not be given a new I. C. C. number, but must be issued as a supplement to the tariff which it cancels, even though such tariff may at the time have a supplement in effect.⁹¹

¶ E. CANCELLATION NOTICE SHALL SPECIFY WHERE FARES WILL THEREAFTER BE FOUND.

If a tariff or part of a tariff is canceled, the cancellation notice shall make specific reference to the I. C. C. number of tariff in which such fares will thereafter be found, or if combination fares are to apply, or if no fares or arrangements in effect, shall so state. Cancellation of a tariff also cancels supplement to such tariff, if any in effect. If a tariff is canceled by the issuance of a similar tariff to take its place, cancellation notice must not be given by supplement, but by notice printed in new tariff, as provided elsewhere.⁹²

¶ F. CONFLICT IN PASSENGER TARIFFS.

Certain fares of a carrier had been published in a joint agent's tariff and also in its own tariff. The carrier issued a new tariff canceling the fares in its own tariff, but did not secure their cancellation in the joint agent's tariff: *Held*, That the new tariff was unlawful because in conflict with the uncanceled tariff of the joint agent.⁹³

§ 641. Agents authorized to issue and File Tariffs and Supplements thereto.

¶ A. NOTICE OF AUTHORIZATION AND ACCEPTANCE MUST BE FILED.

If a carrier authorizes an agent to file its tariffs and sup-

⁹¹ Rule 37, Tariff Circular 17-A.

⁹² *Ibid*.

⁹³ Rule 104, Con. Rul. Bul. No. 4 (Oct. 16, 1908).

plements thereto or certain of them, official notice of such authorization and of acceptance of responsibility by the carrier for his acts, in form as hereinafter specified, must be filed with the Commission.⁹⁴

¶ B. FORM OF APPOINTMENT OF AGENT TO FILE TARIFFS AND SUPPLEMENTS THERETO.

The following form, on paper 8 by 10½ inches in size, will be used in giving authority to an agent to file for the carrier giving the authority, tariffs and supplements thereto. Such authority must not be given to an association or bureau, and it may not contain authority to delegate to another power thereby conferred.⁹⁵

This form may be modified so as to confer the authority desired by omitting the words “(1) for it alone, and (2),” or by omitting the words “and (2) for it jointly with other carriers.”⁹⁶

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

[*Date*],

Form PX1—No. ...

Know all men by these presents:

That the [*name of carrier*] has made, constituted and appointed, and by these presents does make, constitute, and appoint [*name of person appointed*] its true and lawful attorney and agent for the said company, and in its name, place, and stead, (1) for it alone, and (2) for it jointly with other carriers, to file passenger fare schedules and supplements thereto, as required of common carriers by the Act to Regulate Commerce and by regulations established by the Interstate Commerce Commission thereunder, for the period of time, the traffic, and the territory now herein named:

.....
.....
And the said [*name of carrier*] does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully, to all intents and purposes, as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof the said company has caused these presents to be signed in its name by its president and to be duly attested

⁹⁴ See note 6, supra.

⁹⁵ Rule 42, Tariff Circular 17-A.

⁹⁶ Ibid.

under its corporate seal by its secretary, at . . . , in the State of . . . , on this . . . day of . . . , in the year of our Lord nineteen hundred and . . .

The [name of carrier.]

By . . . ,

Its . . . President.

Attest:

. . . , Secretary.

[Corporate Seal.]

Original Form to be filed with Commission and Duplicate furnished Agent.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the agent to whom power of attorney is given. Separate authorizations will be given for freight and passenger tariffs.

¶ C. CROSS EXCHANGE OF CONCURRENCE AVOIDED.

If two or more carriers execute the above form containing the words "for it jointly with other carriers" in favor of a joint agent it will not be necessary for the carriers to exchange concurrences with *each other* as to the joint tariffs issued by that joint agent under that authority.⁹⁷

¶ D. AUTHORITY TO AGENT MAY BE REVOKED OR TRANSFERRED.

Authority given as in *Paragraph A, supra*, may be revoked by a carrier upon thirty days' official notice to the Commission, or at any time be transferred to another agent by filing with the Commission notice of such transfer, accompanied by full-form authorization for the newly named agent.⁹⁸

¶ E. AUTHORIZATIONS FOR AGENT AND CONCURRENCES IN HIS TARIFFS MUST BE FILED.

If two or more carriers appoint the same person as agent for the filing of tariffs and supplements thereto, each of them will be required to file with the Commission power of attorney, in form prescribed, appointing him their agent; and the concurrence of every other carrier participating in any tariff or supplement thereto which is filed by him must be on file with the Commission or accompany the tariff.⁹⁹

⁹⁷ Rule 42, Tariff Circular 17-A.

⁹⁸ See note 6, *supra*.

⁹⁹ *Ibid*.

¶ F. JOINT AGENT WILL USE HIS OWN I. C. C. SERIAL NUMBER.

Such joint agent duly authorized to act for several carriers must file joint tariffs under I. C. C. serial numbers of his own.¹⁰⁰

¶ G. TARIFFS ISSUED BY A CARRIER UNDER CONCURRENCES WILL BE FILED BY IT FOR ALL CONCURRING.

Tariff issued by a carrier under its I. C. C. numbers may include under proper concurrence shown therein, fares via, and to and from points on other carriers' lines, and concurring carriers may use such tariffs for posting at their stations. Such tariffs must be filed by the issuing carrier and such filing will constitute filing for all lawfully concurring carriers.¹⁰¹

¶ H. SEND COPIES OF JOINT PUBLICATION TO EVERY CARRIER PARTICIPANT THEREIN.

The agent of the carrier that issues a joint tariff publication shall at once send copies thereof to each and every carrier that is named as party thereto.¹⁰²

¶ I. CARRIER MUST NOT PUBLISH FARES CONFLICTING WITH OR DUPLICATING FARES PUBLISHED BY ITS AGENT.

A carrier that grants authority to an agent or to another carrier to publish and file certain of its fares must not in its own publications publish fares in conflict with those which are published by such authorized agent or other carrier, or which duplicate such fares.¹⁰³

§ 642. Limiting Use of Terms "Common Points," "Southeastern Territory," and similar Terms.

The terms "common points," "Southeastern Territory," or similar terms shall not be used in any tariff for the purpose of indicating the points from or to which fares named therein apply unless a full list of such points is printed in

¹⁰⁰ See note 6, supra.

¹⁰¹ Ibid.

¹⁰² Ibid.

¹⁰³ Ibid.

the tariff or specific reference is given to the I. C. C. number of the issue that contains such list.¹⁰⁴

§ 643. Basing or Proportional Tariffs must be Specific.

Tariffs containing basing fares must specify clearly the extent and manner of their use, and tariffs that are especially intended for use in connection with published basing fares must show the I. C. C. numbers of tariffs in which the bases may be found.¹⁰⁵

§ 644. Numerical Order of I. C. C. Numbers of Tariffs, or Explanation of Missing Numbers, Required.

Each carrier files tariffs under I. C. C. numbers, which are presumed to be used consecutively. Occasionally a tariff or supplement is received by the Commission which does not bear I. C. C. number next in numerical order to that borne by the last one filed. This is sometimes occasioned by the missing number having been assigned to a tariff that is in course of preparation. Request is made that in so far as is possible, carriers will file tariffs and supplements in consecutive numerical order of I. C. C. numbers. If from any cause this is not done in any instance, the tariff or supplement that is filed with an I. C. C. number that is not consecutive with the last number filed must be accompanied by a memorandum explaining as to the missing number or numbers.¹⁰⁶

§ 645. Index of Passenger Tariffs.

**¶ A. CARRIERS MUST PUBLISH COMPLETE INDEX OF THEIR
TARIFFS.**

Each carrier shall publish, with proper I. C. C. number, post, and file a complete index of the tariffs which are in effect and to which it is a party as an initial line. Such index shall show: (a) I. C. C. number of each tariff; (b) name or initials of issuing road or agent; (c) brief description of character of tariff; (d) concise statement of points between which

¹⁰⁴ See note 49, *supra*.

¹⁰⁵ Rule 36, Tariff Circular 17-A.

¹⁰⁶ See note 6, *supra*.

tariff applies. Tariffs covering short-time excursion rates and supplements to tariffs need not be included in this index.¹⁰⁷

¶ B. REISSUE AND SUPPLEMENTS.

If any changes are made, this index shall be revised to date and be reissued each month, or, supplement may be issued each month showing all changes and also what tariff, if any, shown in index is canceled or superseded by one shown in supplement, and index be reissued every six months. If supplements are used, they must be constructed in accord with specifications as to construction of index and each supplement must cancel preceding supplement and bring forward all corrections. If carrier so desires, lists of its division sheets, official circulars, and of its own numbers of its tariffs or division sheets may appear in this publication.¹⁰⁸

¶ C. NOTATION ON TITLE-PAGE.

Each index must bear on its title-page notations as follows: "This index contains lists of tariff publications in effect on [*date of issue of the index*]," to which may be added: "Or which have been filed to become effective at a later date, as shown within." If supplement to index will not be used, "No supplement to this index will be issued;" if supplements will be used, "Only one supplement to this index will be in effect at any time."

Each supplement to index must bear on title-page the notation: "This supplement contains corrections to and as in effect on [*date of issue of the supplement*]," to which may be added: "or which have been filed to become effective at a later date, as shown within."¹⁰⁹

¶ D. DATE OF ISSUE, BUT NOT EFFECTIVE DATE.

The title-page of index or of supplement must show the date of issue thereof, which must correspond to date shown in notation above, and must not bear an effective date. The

¹⁰⁷ Rule 39, Tariff Circular 17-A.

¹⁰⁸ Ibid.

¹⁰⁹ Ibid.

rule requiring thirty days' notice does not apply to these indexes and their supplements.¹¹⁰

NOTE.—This rule is also in rules governing freight tariffs. One index containing both passenger and freight tariffs will be deemed sufficient, but if both are included in one index it must be given an I. C. C. number in both freight and passenger series and four copies must be sent to the Commission.¹¹¹

§ 646. Tariffs containing Rail-and-Water or All-Water Rates.

Tariffs containing rail-and-water fares or all-water fares applicable via routes upon which it is necessary to close navigation during a portion of the year, and which do not become effective and expire by specified expiration within the same season of navigation, may provide for suspension and restoration of the rail-and-water fares and the all-water fares named therein under the following regulations:¹¹²

¶ A. NOTATION ON TITLE-PAGE OF TARIFF.

The following notation shall appear on the title-page of the tariff.¹¹³

The fares named herein for rail-and-water or all-water transportation are subject to suspension at the close of navigation and restoration on the opening of navigation of [*here insert the name of the water carrier or carriers specified in the tariff*] on notice as provided on page of this tariff.¹¹⁴

¶ B. RULE IN TARIFF PROVIDING FOR RESTORATION AND SUSPENSION OF FARES.

In the rules governing the tariff shall appear the following:

In anticipation of the opening of navigation of [*here insert name of water carrier or carriers named in the tariff*] restoration of the rail-and-water and all-water fares contained in this tariff and in effective supplement thereto which was in force on the date the fares were last suspended or which has subsequently been made effective, will be announced by supplement to this tariff which will be filed with the Interstate Commerce Commission, be posted at points from which the fares apply, and become effective not less than three days thereafter.

The fares in this tariff and in supplement thereto for rail-and-

¹¹⁰ Rule 39, Tariff Circular 17-A.

¹¹¹ Ibid.

¹¹² Rule 40, Tariff Circular 17-A.

¹¹³ Ibid.

¹¹⁴ Ibid.

water and all-water transportation are effective only during the season of navigation of [*here insert the name of water carrier or carriers named in the tariff*]. The supplement announcing the close of navigation and the suspension of rail-and-water and all-water fares named in this tariff and its effective supplement will be filed with the Interstate Commerce Commission and will be posted at points from which the fares apply not less than three days in advance of the date upon which the fares will be suspended.¹¹⁵

¶ C. ROUTES OTHER THAN GREAT LAKES MAY SUSPEND OR RESTORE ON ONE DAY'S NOTICE.

Where the tariff suspended or restored under this rule applies to joint transportation by rail and river, or canal, or inland lakes other than the Great Lakes, such tariff may be suspended or restored on a like notice of one day instead of three days.¹¹⁶

¶ D. SUPPLEMENT MAY CONTAIN.

Supplement issued under this rule announcing suspension and restoration of rail-and-water and all-water fares in tariffs must not contain anything except such suspension or restoration notice, and such supplement will not be counted against the number of supplements that is permitted as to such tariff under rule relating to Amendments and Supplements.

¶ E. SUSPENDED TARIFFS MAY BE REISSUED OR AMENDED.

Rail-and-water and all-water fares suspended under this rule may be reissued or amended during such period of suspension upon statutory notice, the same as though the fares were in effect and active use, but the restoration of the fares by supplement notice will not advance the effective date of any supplement to the tariff which has not on the date of restoration become effective.

Supplements made effective prior to the date of restoration will be made effective on a given date, or may be stated to be "Effective with restoration of tariff and supplement for season of 19.. [*to be announced by subsequent supplement*] but not earlier than [*statutory notice*] 19—, nor earlier than noted in individual items."¹¹⁷

¹¹⁵ Rule 40, Tariff Circular 17-A.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

Statutory notice of suspension, withdrawal, or restoration of fares or regulations must be given as to all tariffs that do not contain the provisions of paragraphs 1 and 2 of this Rule.¹¹⁸

§ 647. Fare Schedules rejected by the Commission.

When a schedule is rejected by the Commission as unlawful, the records so show and, therefore, such schedule should not thereafter be referred to as canceled, amended, or otherwise except to note on publication issued in lieu of such rejected schedule "In lieu of rejected by Commission;" nor shall the number which it bears be again used.¹¹⁹

§ 648. Receipt by and Filing of Tariffs with the Commission does not relieve Carriers from Liability for Violation of the Act or Regulations thereunder.

The law affirmatively imposes upon each carrier the duty of filing with the Commission all of its tariffs, and supplements thereto, as prescribed in the law or in any rule relative thereto which may be announced by the Commission, under penalty for failure so to do or for using any fare which is not contained in its lawfully published and filed tariffs. The Commission will give such consistent assistance as it can in this respect, but the fact that receipt of a tariff, or supplement to a tariff, is acknowledged by the Commission, or the fact that a tariff, or supplement to a tariff, is in the files of the Commission, will not serve or operate to excuse the carrier from responsibility or liability for any violation of the law, or of any ruling lawfully made thereunder, which may have occurred in connection with the construction or filing of such tariff or supplement.¹²⁰

§ 649. Fares prescribed in Commission's Decisions must be Promulgated in Tariffs and Commission Notified.

Fares prescribed by the Commission in its decisions and orders after hearings upon formal complaints shall, in every

¹¹⁸ Rule 40, Tariff Circular 17-A.

¹¹⁹ See note 6, *supra*.

¹²⁰ *Ibid*.

instance, be promulgated by the carrier against which such orders are entered in duly published, filed, and posted tariffs or supplements to tariffs and notice shall be sent to the Commission that its order in Case No. has been complied with in "item, page, of tariff, I. C. C. No. or supplement to tariff, I. C. C. No." ¹²¹

§ 650. Circulars announcing Compliance with Orders of Court.

Circulars announcing or explaining the attitude of carriers under injunction of a Court, relating to tariff fares or regulations, must not be issued as supplements to tariffs nor given I. C. C. numbers unless they are issued on statutory notice or under special permission from the Commission for shorter time. The Commission has stated, that it will however, be pleased to have copies of such circulars and the information therein contained. ¹²²

§ 651. Maintenance of Relative Adjustment in issuing Tariffs to conform with Formal Orders of the Commission.

¶ A. RIGHT OF CARRIER PARTY TO A CASE OR PARTICIPANT IN JOINT TARIFF INVOLVED IN SUCH CASE TO ADJUST ITS RATES TO CONFORM TO ORDER OF COMMISSION.

In establishing fares or regulations under an order of the Commission in a formal case, carrier or carriers that are actually and on the record parties to the case, or that are lawful parties to a joint tariff in which the fare or regulation that is prescribed is published by some carrier that is party to the case, may include in the change or changes made in compliance with the Commission's order adjustment at other points in order to preserve established grouping or relation of points: *Provided*, all such changes made by authority of this rule shall be effected by *reductions* in fares or charges. ¹²³

¹²¹ See note 6, *supra*.

¹²² *Ibid*.

¹²³ *Ibid*.

**¶ B. CARRIER NOT PARTY TO A CASE NOR PARTICIPANT IN JOINT
TARIFF AS ABOVE MUST SECURE SPECIAL PERMISSION OF
COMMISSION.**

If carrier that is not a party to the case or to the joint tariff desires to make, on less than statutory notice, the same changes that are made under the order by carrier that is party to the same, it must secure special permission to do so.¹²⁴

**¶ C. PERMISSION FOR LESS THAN STATUTORY NOTICE AND
NOTATION ON TARIFF.**

Unless otherwise specified in the order in the case, such tariff or supplement may be made effective upon five days' notice to the Commission and to the public, and if made effective on less than statutory notice, either under this Rule or under special authority granted in the order in the case, shall bear on its title-page notation "In compliance with order of Interstate Commerce Commission in case No."¹²⁵

**§ 652. All State or other Fares used for Interstate Movements
must be Posted and Filed.**

Fares for through tickets are often made by adding together two or more fares. All State or other fares used in combination for interstate movements must be posted at points from which they apply and filed with the Commission, and can only be charged as to such traffic in accordance with the terms of the Act.¹²⁶

**§ 653. All Local Tariffs should have I. C. C. Numbers and be
Posted and Filed.**

The Commission believes it proper that all local tariffs be given I. C. C. numbers and be posted and filed with the Commission in manner prescribed in the Act.¹²⁷

¹²⁴ See note 6, supra.

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

§ 654. Fares governing Transportation for the United States Government need not be Published.

Provisions for the subsistence and care in transit of Chinese being deported are matters of contract between the carrier and the Government, and need not be published in the tariffs.¹²⁸

§ 655. Rates of the Pullman Company.

The Pullman Company is a common carrier, subject to the jurisdiction of the Interstate Commerce Commission. It is required to publish its rates and its regulations governing the application of those rates, and these when published are for the consideration and correction of the Commission.¹²⁹

§ 656. Tariffs covering Mileage, Commutation, Excursion and Round-Trip Fares and Tickets.

¶ A. IN GENERAL.

The Commission has held that it is of the opinion that the provisions of the sixth section of the Act as amended in respect of the publishing, filing, and posting of tariffs apply to the mileage, commutation and excursion fares authorized by the twenty-second section of the Act. Such a fare when first established or offered is held to be a change of fare which requires a notice of thirty days. No reason appears why this notice should not be given in the case of mileage fares, commutation fares, round-trip fares or other reduced fares which, like ordinary passenger fares, are established for an indefinite period and appear to be a matter of permanent policy.¹³⁰

¶ B. ROUND-TRIP EXCURSION FARES.

The Commission has held that strictly excursion fares, covering a named and limited period, are of a different character than those designated in the preceding paragraph and may properly be established on much shorter notice.¹³¹

¹²⁸ Rule 107, Con. Rul. Bul. No. 4.

¹²⁹ Kurtz v. Pa. Co. et al. (1909), 16 I. C. C. R. 410.

¹³⁰ Rule 52, Tariff Circular 17-A.

¹³¹ Ibid.

To avoid the necessity for special application in cases of this kind the Commission has made a general order fixing the following-named time of notice of round-trip excursion fares, and carriers may govern themselves accordingly:

Fares for an excursion limited to a designated period of not more than three days may be established, without further notice, upon posting a tariff one day in advance in two public and conspicuous places in the waiting room of each station where tickets for such excursion are sold and mailing a copy thereof to the Commission.¹³²

Fares for an excursion limited to a designated period of more than three days and not more than thirty days may be established upon a like notice of three days.¹³³

Fares for a series of daily excursions, such series covering a period not exceeding thirty days, may be established upon like notice of three days as to the entire series, and separate notice of the excursion on each day covered by the series need not be given.¹³⁴

Fares for an excursion limited to a designated period exceeding thirty days will require the statutory notice unless shorter time is allowed in special cases by the Commission.¹³⁵

Definition of Term "Limited to a Designated Period."

The term "limited to a designated period" used above is construed to cover the period between the time at which the transportation can first be used and the time at which it expires. If tariff names different selling dates for excursions which form a series, and the period of time between the first selling date and the last date upon which any tickets sold under the tariff may be used exceeds thirty days, the series of excursions so provided for do not come within the period of "not exceeding thirty days," and such tariff may not be issued by authority of this Rule. But it is permissible to establish fares for two or more distinct and separate excur-

¹³² Rule 52, Tariff Circular 17-A.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

sions to various points and for various occasions, each such excursion limited to a designated period of not more than thirty days, and for convenience of public and agents to announce them in a bulletin tariff under this Rule. It is also permissible to show in such bulletin, fares for a series of excursions between the same points, such series covering a period of more than thirty days, provided full statutory notice of such series is thereby given, and provided title-page of publication bears notation "Effective except as noted in individual items as to which full statutory notice is given." When such items are brought forward to another issue of bulletin they must bear notation 'First announced in Bulletin No., I. C. C. No., of, 19...' ¹³⁶

No Supplement to Tariff under this Rule.

No supplement may be issued to any tariff that is issued under this Rule except for the purpose of canceling the tariff, and title-page of tariff must so state. Every such tariff must bear notation on title-page "Issued by authority of Rule 52, Tariff Circular, 17-A."

Changes in Excursion Tariffs.

When it becomes necessary to change the terms of a short-time excursion fare tariff issued under this Rule and covering a period not exceeding thirty days, for any of the following reasons: Changes in dates of meeting, involving changes in dates of sale and in return limit, not exceeding thirty days; extension of the return limit, not exceeding thirty days; additional selling dates; additional selling points; additional stop-over privileges; reduction in fares; or to cancel such tariff before date of its expiration when the occasion for the excursion has been declared off, such change or cancellation may, when the excursion is limited to designated period of not more than three days, be made by posting tariff containing the change or supplement containing the cancellation, one day in advance in two public places in the waiting room of each station where tickets for such excursion are sold, and

¹³⁶ Rule 52, Tariff Circular 17-A.

mailing copy thereof to the Commission. If the excursion is limited to a designated period of more than three days and not more than thirty days, cancellation or change may be made on like notice of three days. If the excursion is limited to a designated period exceeding thirty days, statutory notice must be given of change or cancellation, or special permission for shorter time must be secured.¹³⁷

No Index or Routing Required.

Short-time excursion fare tariffs issued under authority of this Rule need not contain alphabetically arranged indexes of stations from and to which the fares apply, nor show specific routing *when* the fares are stated in such terms as "One first-class fare for the round trip," etc.¹³⁸

When the fares are stated in specific sums the routing may be shown by reference to other tariffs which contain the desired routing, and in the following manner: Show in the tariff by proper initials and I. C. C. numbers the tariffs that are thus referred to, designating each of them by a letter, and place opposite the name of each point of origin, in a column marked "Route," the proper reference letter. For example: "Route A. Routing as per I. C. C. No." "From Smithville, Nebr., to Jonesboro, Kans., Route A, \$17.20."¹³⁹

§ 657. Maxima Fares not Specific Fares.

¶ A. FARES AND THEIR APPLICATION MUST BE SPECIFICALLY STATED.

The rulings of the Commission prohibit including in a tariff any rule or regulation which in any way or in any terms authorizes substituting for any fare named in the tariff a fare found in any other tariff or made upon any combination or plan other than that clearly stated in specific terms in the tariff of which the rule or regulation is a part. These rules

¹³⁷ Rule 52, Tariff Circular 17-A.

¹³⁸ Ibid.

¹³⁹ Ibid.

are intended to bring about entire discontinuance of tariff rules which provide that fares named in the tariff will apply to certain points "as maxima," or that if a combination on some gateway or basing point makes less than the fares named in the tariff such combination will apply, or for equalizing or protecting any fare via another line or route or gateway, etc. The intent is that tariffs shall state in specific, clear, and unambiguous terms the fares and their application.¹⁴⁰

¶ B. FARES TO OR FROM INTERMEDIATE POINTS.

The rulings of the Commission provide that a tariff shall contain complete alphabetical indices of the points from and to which it applies. The Commission has held that this is not to be understood as prohibiting the incorporation in a tariff of a rule providing for the affirmative and definite application of the fares named in that tariff to or from points not indexed and which are directly intermediate on the same line with the points that are indexed.¹⁴¹

¶ C. SPECIFIC JOINT THROUGH FARE MUST BE INVARIABLY APPLIED.

In every instance where there is a *specific* fare from point of origin to point of destination it must be applied to through passengers regardless of possible lower combinations.¹⁴²

§ 658. Tariffs governing Use of Party-Fare Tickets.

The tariffs and regulations governing the issuance and use of party fare tickets, together with the rules relating to the allowance of free baggage to persons using such tickets, must be regularly filed and published. The privileges so extended must not be limited to any particular class or classes of persons, but must be open to all. Regulations governing issuance and use of party fare tickets must not be such as will operate to evade or nullify any provision of the law. The Commission suggests that the rules should provide that the party

¹⁴⁰ Rule 64, Tariff Circular 17-A.

¹⁴¹ Ibid.

¹⁴² Ibid.

shall travel on one ticket and consist of not less than ten persons.¹⁴³

Members of Party traveling on Party-Fare Ticket may accompany Exclusive Baggage Car on another Train.

When a party of ten (10) or more persons are traveling on a party-fare ticket and require the exclusive use of a baggage car, and such baggage car is not forwarded upon the same train which bears the passengers, and where it is necessary that one or more men of the party shall accompany the baggage car, a separate ticket may be issued for the use of such men as members of the party, provided such ticket is indorsed as a part of such party fare ticket and for, and limited to, the train upon which the baggage car is hauled.

It is not, however, lawful or permissible to permit person or persons to go in advance of or to follow the party as passengers and be computed as a part of the party or as entitled to the party fare. All tariff provisions to such effect are unlawful and must be withdrawn at once.¹⁴⁴

§ 659. Side Trips not specifically shown in a Through Tariff.

The Commission has held that a note in a through tariff providing that passengers purchasing through tickets thereunder shall be entitled to such side-trip privileges as are stated in the individual tariffs on file with the Commission of the carriers that are parties to the through fares, is a sufficient compliance with the requirements of law and with the rules of the Commission.¹⁴⁵

§ 660. Concurrence by Carriers in Tariffs issued and filed by another Carrier or its Agent.

¶ A. MANDATE OF THE STATUTE REGARDING CONCURRENCE IN JOINT TARIFFS.

The Act provides that each of the parties to a joint tariff, other than the one filing the same, shall file with the Com-

¹⁴³ Rule 62, Tariff Circular 17-A.

¹⁴⁴ Ibid.

¹⁴⁵ Rule 177, Con. Rul. Bul. No. 4 (May 10, 1909).

mission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.¹⁴⁶

¶ B. CONCURRENCE BETTER THAN POWER OF ATTORNEY.

The Commission has ruled that experience has demonstrated that it is simpler and better to use concurrence than power of attorney in giving authority to a carrier to publish and file another carrier's fares. Provision for giving power of attorney to another carrier has therefore been eliminated except for the purpose of granting authority to give and receive concurrences as provided elsewhere.¹⁴⁷

This does not invalidate or change the terms or effect of any power of attorney now on file with the Commission.¹⁴⁸

¶ C. CONCURRENCE MUST BE GIVEN TO CARRIERS NAMED THEREIN.

Concurrences must be given to carriers named therein and authority so granted to a carrier may be by it delegated to its lawfully appointed agent.¹⁴⁹

¶ D. SIZE OF PAPER.

All concurrences must be on paper 8 by 10½ inches in size.¹⁵⁰

¶ E. SEPARATE CONCURRENCES FOR PASSENGER AND FREIGHT TARIFFS.

Separate concurrences will be given by carriers for passenger and freight tariffs.¹⁵¹

¹⁴⁶ See note 1, *supra*.

¹⁴⁷ See note 95, *supra*.

¹⁴⁸ *Ibid*.

¹⁴⁹ *Ibid*.

¹⁵⁰ *Ibid*.

¹⁵¹ *Ibid*.

¶ F. FORM OF CONCURRENCE IN A TARIFF THAT IS ISSUED AND FILED BY ANOTHER CARRIER OR ITS AGENT AND TO WHICH THE CARRIER GIVING CONCURRENCE IS A PARTY.

The following form will be used in giving concurrence in a tariff that is issued and filed by another carrier or its agent and to which the carrier giving concurrence is a party. If given to continue until revoked, it will serve as continuing concurrence in the tariff described in the concurrence and all supplements to and reissues thereof. If provision for concurrence to continue until revoked is stricken out, a new concurrence will be required with each supplement or reissue.¹⁵²

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Passenger Department,

[*Date*],

Form PX2—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of the fare schedule described below, together with supplements thereto and reissues thereof which the named issuing carrier or its agent may make and file, and hereby makes itself a party thereto and bound thereby, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

Title and number: [*Here give exact description of title of schedule, including number and name of series.*]

Date of issue:,

Date effective:,

Issued by { [*Official.*]
 { [*Company.*]

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Concurrence accompanying Tariff.

The original of this form will be filed with the Commission by the carrier or agent who files the tariff and will accompany the tariff.¹⁵³

¹⁵² Rule 43, Tariff Circular 17-A.

¹⁵³ Ibid.

¶ G. FORM OF CONCURRENCE GIVEN BY CARRIER TO EMBRACE ALL TARIFFS ISSUED BY ANOTHER CARRIER OR ITS AGENT IN WHICH CONCURRING CARRIER IS SHOWN AS A PARTICIPATING INTERMEDIATE OR TERMINAL LINE.

Concurrence may be given by a carrier to embrace all tariffs issued by another carrier or its agent in which the concurring carrier is shown as a participating intermediate or terminal line, and after the following form:¹⁵⁴

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date],

Form PX3—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto, which the [name of carrier] or its agent may make and file, in which it is shown as a participating carrier, and hereby makes itself a party thereto and bound thereby in so far as such schedule contains fares applying via its line and to, but not from, points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Original Form to be filed with Commission and Duplicate furnished Carrier.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way, except to show what agents have been given power of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.¹⁵⁵

Concurrences PX3 cover all fares issued by carrier to which given and which apply via the line of, and to but not from points located upon the line of the carrier giving the concur-

¹⁵⁴ Rule 44, Tariff Circular 17-A.

¹⁵⁵ Ibid.



rence. This is intended to reserve to the initial carrier the quotation of fares upon traffic originating on its line, except when by use of another form of concurrence or power of attorney it grants authority to some other to quote such fares.¹⁵⁶

Round-Trip Excursion Fares included in Concurrence.

Round-trip excursion fares are not, however, considered as applying to traffic originating at the points where the return journey begins. Concurrences PX3 are, therefore, considered and held to include concurrence in round-trip excursion fares, stated in specific figures or in some such term as "one fare for the round-trip."¹⁵⁷

¶ H. FORM OF CONCURRENCE GIVEN BY A CARRIER IN TARIFFS ISSUED BY ANOTHER CARRIER OR ITS AGENT APPLYING FARES TO OR FROM ITS POINTS OR VIA ITS LINES, TO CERTAIN DESCRIBED POINTS OR TERRITORIES.

Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying fares to or from its points or via its lines, to certain described points or territories, and after the following form, modified as may be necessary to confer exactly the authority intended to be granted. For granting authority to publish and file fares to and from and via its lines, and not otherwise qualified, carriers will use concurrence form PX5 or PX7.¹⁵⁸

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date] . . . ,

Form PX4—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto, which the [name of carrier] or its agent may make and file, and in which this company is shown as a participating carrier,

¹⁵⁶ Rule 44, Tariff Circular 17-A.

¹⁵⁷ Ibid.

¹⁵⁸ Rule 45, Tariff Circular 17-A.

and hereby makes itself a party to and bound in so far as such schedule contains fares applying upon; or between and; or from to; or via; until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Original Form to be filed with Commission and Duplicate furnished Carrier.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given.¹⁵⁹

¶ I. FORM OF CONCURRENCE BY A CARRIER IN TARIFFS ISSUED BY ANOTHER CARRIER OR ITS AGENT APPLYING FARES TO AND FROM ITS POINTS AND VIA ITS LINES.

Concurrence may be given by a carrier in tariffs issued by another carrier or its agent applying fares to and from its points, and via its lines, and after the following form:¹⁶⁰

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date],

Form PX5—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto, which the [name of carrier] or its agent may make and file, and in which this company is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying to and from stations on its lines, and via its lines, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

¹⁵⁹ Rule 45, Tariff Circular 17-A.

¹⁶⁰ Rule 46, Tariff Circular 17-A.

Original Form to be filed with Commission and Duplicate furnished Carrier.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to the carrier to which concurrence is given. This form must not be qualified in any way, unless to show what agents have been given powers of attorney and to provide that tariffs shall not be issued under the concurrence covering traffic provided for in tariffs issued by such agents.¹⁶¹

¶ J. FORM OF CONCURRENCE GIVEN BY TWO OR MORE CARRIERS
IN TARIFFS ISSUED BY THEIR JOINT AGENT.

If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under power of attorney form PX1, concurrence in tariffs issued by him under such authority may be in either of the following forms:¹⁶²

(A)

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date],

Form PX6—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger fare schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such tariff contains fares applying via its line, and to but not from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

¹⁶¹ Rule 46, Tariff Circular 17-A.

¹⁶² Rule 47, Tariff Circular 17-A.

(B)

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[Name of carrier in full.]

General Passenger Department,

[Date] . . . ,

Form PX7—No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [name of carrier] assents to and concurs in the publication and filing of any passenger fare schedule or supplement thereto which the [here give list of all roads for which the agent has powers of attorney], or either or any of them, may make and file through their agent and attorney [name of agent], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying via its line, and to and from points thereon, until this authority is revoked by formal and official notices of revocation placed in the hands of the Interstate Commerce Commission and of the carrier to which this concurrence is given, or of its agent and attorney herein named.

[Name of carrier.]

By [Name of officer.]

[Title of officer.]

Filing.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicates to each and every carrier represented by him.¹⁶³

¶ K. FORM OF CONCURRENCE GIVEN BY TWO OR MORE CARRIERS
IN TARIFFS ISSUED BY THEIR JOINT AGENT, APPLYING TO
OR FROM CERTAIN POINTS OR TERRITORY.

If two or more carriers appoint the same person as agent for the publication and filing of tariffs and supplements thereto under power of attorney form PX1, concurrence in tariffs issued by him under such authority applying to or from certain points or territory may be issued in the following form, modified so as to confer exactly the authority desired.¹⁶⁴

¹⁶³ Rules 47 and 48, Tariff Circular 17-A.

¹⁶⁴ Rule 49, Tariff Circular 17-A.

TO BE FILED WITH THE INTERSTATE COMMERCE COMMISSION.

[*Name of carrier in full.*]

General Passenger Department,

[*Date*] . . . , . . .

Form PX8—No. . . .

To the Interstate Commerce Commission,

Washington, D. C.:

This is to certify that the [*name of carrier*] assents to and concurs in the publication and filing of any passenger-fare schedule or supplement thereto which the [*here give list of all roads for which the agent has powers of attorney*], or either or any of them, may make and file through their agent and attorney [*name of agent*], and in which it is shown as a participating carrier, and hereby makes itself a party to and bound thereby in so far as such schedule contains fares applying from . . . to points on or reached via its line; or from points on or via its line to . . . until this authority is revoked by formal and official notice of revocation placed in the hands of the Interstate Commerce Commission and of the carriers to which this concurrence is given, or of their agent and attorney herein named.

[*Name of carrier.*]

By [*Name of officer.*]

[*Title of officer.*]

Filing.

Carrier issuing this form will file the original with the Commission and will furnish duplicate to each of the carriers named in the concurrence, or, if each of those carriers has given said agent power of attorney to receive for it concurrences, original will be filed with the Commission and one duplicate may be filed with such agent instead of furnishing duplicate to each and every carrier represented by him.¹⁶⁵

NOTE.—Concurrence, form PX2, applies to individual publication named therein. Concurrence, form PX3 or PX6, confers authority to publish and file fares to, but not from, points on line of concurring carrier and via its lines. Concurrence, form PX5 or PX7, confers authority to publish and file fares to and from points on line of concurring carrier and via its lines. Forms PX3, PX5, PX6, and PX7 are not to be modified except as specified in the Rules. The use of these several forms as provided will, therefore, show by the form number just what authority has been given except when form PX4 or PX8 is used, these forms being provided for instances which the other forms do not exactly fit. The Commission does not require the substitution of concurrence form PX5 for form PX4, now on file, which covers only the authority provided for in the new form PX5, but will welcome such substitution. For all new concurrences forms will be used as specified in the several Rules, and PX4 or PX8 only when neither of the other forms provides for the authority it is desired to confer.

¹⁶⁵ Rule 49, Tariff Circular 17-A.

¶ L. NUMBERS OF CONCURRENCES AND AUTHORIZATIONS.

Each carrier will give authorizations and concurrences serial numbers, beginning with No. 1 in each series, as indicated by forms, and continuing in consecutive numbers as to each series, and keeping these numbers separate and apart from I. C. C. numbers of tariffs.

¶ M. REVOCATION EFFECTIVE.

A concurrence may be revoked by filing notice of such revocation with the Commission and serving same upon the carrier to which such concurrence was given. Such notice must specify the date upon which revocation is to be made effective, and must give at least sixty days' notice to the Commission and to the carrier to which concurrence was given. Corresponding correction of tariff or tariffs shall be made in the next supplement to or reissue thereof, and if necessary, supplement or reissue shall be issued for the sole purpose of making such correction lawfully effective on statutory notice upon the effective date stated in the notice of revocation.¹⁶⁶

¶ N. SUBSIDIARY OR SMALL-LINE TARIFFS.

Subsidiary or small lines which do not wish to issue concurrences or tariffs may give to the parent or other line power of attorney to concur in tariffs, and also general concurrence PX4 or PX5, to file tariffs, and the carrier holding such authority and concurrence may give and also receive concurrence for itself and the lines for which it acts in one instrument. Such subsidiary or small lines must, however, be named in concurrences so given. In giving power of attorney to concur in tariffs, form PX1 will be modified by striking out from line six the word "file" and substituting therefore: "to give and receive concurrences in."¹⁶⁷

¶ O. CONFLICTING AUTHORITY TO BE AVOIDED.

In giving concurrences care must be taken to avoid proba-

¹⁶⁶ Rule 50, Tariff Circular 17-A.

¹⁶⁷ Ibid.

bility of two or more agents or carriers naming conflicting fares or rules.¹⁶⁸

¶ P. CARRIER ISSUING AUTHORITY OR CONCURRENCE IS NOT RELIEVED FROM DUTY OF POSTING TARIFFS.

The granting of authority to issue tariffs under power of attorney, or general concurrence, does not relieve the carrier conferring the authority from the necessity of complying with the law with regard to posting tariffs. It is proper to use tariffs issued under its authority for that purpose.¹⁶⁹

¶ Q. USE OF CONSOLIDATED CONCURRENCES.

When consolidated form of concurrence PX6, PX7, or PX8 has been used and additions are to be made to the list of roads for which such agent acts under powers of attorney the necessity for a new set of consolidated concurrences presents itself. Trouble and inconvenience can be avoided by the issuance of powers of attorney authorizing such agent to receive concurrence provided in *paragraphs J and K, supra*, this section, and the securing of new concurrences will be comparatively simple.¹⁷⁰

¶ R. CONCURRENCE IN TARIFFS OF CARRIERS IN ADJACENT FOREIGN COUNTRIES.

The Commission has stated that through fares from points in the United States to points in foreign countries adjacent thereto and through rates from points in adjacent foreign countries to points in the United States are a great convenience, and that it desires to permit and encourage the publication and filing of such through fares under lawful and proper conditions.¹⁷¹

Concurrences required in Tariffs to or from Mexico.

A joint tariff naming fares from a point in the United

¹⁶⁸ Rule 50, Tariff Circular 17-A.

¹⁶⁹ Ibid.

¹⁷⁰ See note 6, *supra*.

¹⁷¹ Rule 72, Tariff Circular 17-A.

States to a point in Mexico, must be concurred in by the carriers that are parties to the through fares and participate in through transportation thereunder.¹⁷²

If a road in Mexico desires to reserve the contention that it is not amenable to the provisions of the Act to Regulate Commerce or to the jurisdiction of the Commission it may note such reservation on its concurrence.

Divisions must be Filed.

Such tariff must either show the divisions of the fares accruing to the roads in the United States to or from the border or a statement of such divisions of the fares must be filed with the Commission, together with and at the time the tariff itself is filed.¹⁷³

Rule also applies to Canada.

This rule applies in like manner to tariffs containing fares from points in the United States to points in Canada, and also in like manner to tariffs containing fares from points in Mexico to points in the United States or from points in Canada to points in the United States, or from points in Mexico through the United States to points in Mexico, or from points in Canada through the United States to points in Canada, or from points in Mexico through the United States to points in Canada, or from points in Canada through the United States to points in Mexico.¹⁷⁴

§ 661. Letter of Transmittal accompanying Tariffs filed with the Commission.

All tariffs that are filed with the Commission should be accompanied by a letter of transmittal, on paper 8 by 10½ inches in size, and to the following effect:¹⁷⁵

¹⁷² Rule 72, Tariff Circular 17-A.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ Rule 51, Tariff Circular 17-A.

[Name of carrier.]

General Passenger Department,

[Date],

Advice No. ...

To the Interstate Commerce Commission,

Washington, D. C.:

Accompanying schedule is sent you for filing in compliance with the requirements of the Act to Regulate Commerce, issued by bearing

I. C. C. No.;

Supp. No. to I. C. C. No.;

Effective, 190...;

and is concurred in by all carriers named therein as participants under continuing concurrences or authorizations now on file with the Interstate Commerce Commission, except the following-named carriers, whose concurrences are attached hereto:

.....
.....
.....

[Signature of filing agent.]

A separate letter may accompany each schedule, or the form may be modified to provide for filing under one letter as many schedules as can be conveniently entered.¹⁷⁶

NOTE.—If receipt for accompanying schedule is desired, the letter of transmittal must be sent in duplicate, and one copy will be stamped and returned as receipt.¹⁷⁷

§ 662. Tariffs governing Movement of Passengers to and from Foreign Countries.

¶ A. FARES GOVERNING INLAND HAUL.

The inland carriers of passenger traffic to or from a foreign country *not adjacent*, must publish their fares to the ports and from the ports, and such fares must be the same for all regardless of what ocean carrier may be designated by the passenger.¹⁷⁸

¶ B. THROUGH RATES OR FARES MAY BE SHOWN.

As a matter of convenience to the public carriers may publish in their tariffs such through fares to or from foreign points as they may make in connection with ocean carriers.

¹⁷⁶ Rule 51, Tariff Circular 17-A.

¹⁷⁷ Ibid.

¹⁷⁸ Rule 71, Tariff Circular 17-A.

Such tariffs must, however, distinctly state the inland fare as above provided; and need not be concurred in by the ocean carrier, because, concurrence can be required from, and is effective against, only carriers subject to the Act.¹⁷⁹

¶ C. STEAMSHIP CHARGES MAY BE SHOWN.

It is permissible for a carrier to state its inland fares, which must be open to all alike, regardless of what ocean carrier may be designated by the passenger, and regardless of the nationality or employment of the person transported, and in the same connection to show the additional steamship charges which go to make up through fares to or from foreign destinations.¹⁸⁰

¶ D. EVIDENCE OF STEAMSHIP PASSAGE IN CONNECTION WITH INLAND FARES.

If the inland portion of such fares is different from the carrier's domestic fares, and if such inland proportionals are offered only in connection with travel to or from a foreign country, it is entirely proper and necessary that the inland carrier shall require evidence of steamer passage having been paid for before granting to any person its inland proportional fare which its tariff offers in connection with such journey; and to note on separate tickets that may be issued for the inland and the ocean portions of such trip cross references to the other portions of such tickets, and to require satisfactory evidence to be presented to conductor in order to make valid such inland proportional ticket.¹⁸¹

¶ E. STATUTORY NOTICE REQUIRED.

The Commission has ruled that whatever plan of publishing these fares is followed, the tariffs must be filed and posted, and may be changed only upon statutory notice or under special permission for shorter time.¹⁸²

¹⁷⁹ Rule 71, Tariff Circular 17-A.

¹⁸⁰ Ibid.

¹⁸¹ Ibid.

¹⁸² Ibid.

CHAPTER XXXV.

INTERCHANGE OF TRAFFIC BETWEEN CONNECTING CARRIERS AND THROUGH OR CONTINUOUS TRANSPORTATION.

SECTION

- 663. Carriers must afford Reasonable, Proper and Equal Facilities for Interchange of Traffic.
- 664. Continuous Carriage of Freights from Place of Shipment to Place of Destination.
- 665. Purpose of Statutes relating to Interchange of Traffic and Continuous Transportation.
- 666. Use of Tracks and Terminal Facilities of Another Carrier.
- 667. Duty of Carriers to exchange, interchange and return Cars.
- 668. Carrier desiring Interchange of Traffic must provide all Necessary Facilities.
- 669. Discrimination in furnishing Facilities for Interchange of Traffic.
- 670. State Statute requiring Track Connection.

§ 663. Carriers must afford Reasonable, Proper, and Equal Facilities for Interchange of Traffic.

The Act provides that every common carrier subject to its provisions shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but that this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.¹

It is the duty of an interstate carrier to receive inter-

¹ Act to Regulate Commerce. Section 3.

state shipments, to issue receipts therefor, to indicate on the waybills the final destinations, and to transport and deliver them to its connecting carriers; and it is the duty of the connecting carriers to transport and deliver at destinations, each carrier charging for its service its legally published rate.²

§ 664. Continuous Carriage of Freights from Place of Shipment to Place of Destination.

The Act provides that it shall be unlawful for any common carrier subject to its provisions to enter into any combination, contract, or agreement, express or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination, and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of the Act.³

§ 665. Purpose of Statutes relating to Interchange of Traffic and Continuous Transportation.

The purpose of the provisions of the third and seventh sections of the Act relating to interchanged traffic was to secure through carriage and the freest possible interchange of traffic along and over all lines and routes where the physical connections and conditions for such interchange exist, both in the interest of commerce and to secure impartial treatment of railroad companies connecting with others.⁴

² Corporation Commission of State of Oklahoma v. C. R. I. & P. Ry. Co. et al. (1910), 17 I. C. C. R. 379.

³ Act to Regulate Commerce. Section 7. See case of Cutting v. Florida Ry. & Nav. Co. (1891), 46 Fed. Rep. 641.

⁴ Ninth Annual Report of I. C. C. (1895).

The right of continuous transportation from one end of the country to the other is essential in modern times to that freedom of commerce from the restraints which the States might also choose to impose upon it.

§ 666. Use of Tracks and Terminal Facilities of Another Carrier.

The provision of the Act relating to facilities for interchange of traffic, states that nothing contained therein shall be construed as requiring any common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.⁵ Such tracks and terminal facilities can only be used by another railroad company for the exchange of interstate freight, with the consent of the carrier owner thereof.⁶

So, where a railroad company has established facilities at a certain place within a city for the interchange of traffic with connecting roads, it is not required, under the Act, to establish facilities at another place in the same city for the interchange of traffic with another road.⁷

§ 667. Duty of Carriers to exchange, interchange and return Cars.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) after providing for the establishment and operation of through routes, requires carriers to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and to provide for responsible compensation to those entitled thereto.

§ 668. Carrier desiring Interchange of Traffic must provide all Necessary Facilities.

A railroad company cannot demand an interchange of traf-

⁵ See note 1, *supra*.

⁶ *Little Rock & M. Rd. Co. v. St. L. I. M. & S. Ry. Co. et al.* (1894), 59 Fed. Rep. 400, affirmed 63 Fed. Rep. 775, 11 C. C. A. 417.

⁷ *Kentucky & I. Brdg. Co. v. L. & N. Rd. Co.* (1889), 37 Fed. Rep. 567, 2 L. R. A. 289, refusing to enforce order of Commission, 2 I. C. C. R. 162; 2 I. C. R. 102.

fic with a connecting carrier without first providing at the point of physical connection reasonable and proper facilities for the interchange sought. Neither can it compel the receiving carrier to go to any expense in providing such facilities.¹¹

§ 669. Discrimination in furnishing Facilities for Interchange of Traffic.

¶ A. DISCRIMINATION BETWEEN CONNECTING LINES FORBIDDEN BY STATUTE.

The Act to Regulate Commerce after commanding common carriers to afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, forbids any discrimination in the rates and charges between such connecting lines.¹²

¶ B. WHAT CONSTITUTES AN UNLAWFUL DISCRIMINATION.

Whether a carrier is guilty of violating the Act by refusing to afford equal facilities for the interchange of traffic is to be determined by applying all the considerations of equity to the case and should be found to exist only when such facilities can be afforded "under substantially similar circumstances and conditions."¹³

The Act does not require a carrier to furnish to one carrier equal facilities for the interchange of traffic that it furnishes to others where the circumstances and conditions are dissimilar.¹⁴

¶ C. DISCRIMINATION IN EXACTING PREPAYMENT OF CHARGES BY PRECEDING CARRIER.

Section 1 of the Act to Regulate Commerce (*as amended*)

¹¹ See note 6, *supra*.

¹² See note 1, *supra*.

¹³ *New York & N. Ry. Co. v. New York & N. E. Rd. Co.* (1892), 50 Fed. Rep. 867; see s. c., 4 I. C. C. R. 702; 3 I. C. R. 542.

¹⁴ See note 7, *supra*.

June 18, 1910), after providing for the establishment of through routes and just and reasonable rates applicable thereto, requires carriers to make *reasonable* rules and regulations for the operation of such through routes.

Under this provision it would certainly be an undue or unreasonable disadvantage for an interstate carrier to exact from another carrier the prepayment of charges on all property received from it at a given station, where it does not require charges to be paid in advance on freight received from other carriers at such points.

¶ D. DISCRIMINATION IN GRANTING WHARFAGE FACILITIES.

Defendant operated a railroad and a line of steamers between Astoria, Ore., and Shoal Water Bay, Wash. At Ilwaco it had a wharf where the steamers and railroad connected. This, it contended was a private wharf and refused to allow complainant's steamers to land there. *Held*, That Section 3 of the Act contemplates independent carriers besides the offending railroad, capable of mutual relations, and capable of being objects of favor or prejudice, and for a carrier to prefer itself in its own proper business is not the discrimination which is condemned by the statute.¹⁸

¶ E. USE OF TRACKS AND TERMINAL FACILITIES.

A railroad company may permit the use of its tracks and terminal facilities by one carrier to the entire exclusion of others.¹⁹ Such action does not constitute an undue or unreasonable preference or advantage, or unlawful discrimination against such other carriers within the meaning of the Act.²⁰

¹⁸ Ilwaco Ry. & Nav. Co. v. Oregon Short Line & U. N. Ry. Co., 57 Fed. Rep. 673; 6 C. C. A. 495; 15 U. S. App. Rep. 173; 5 I. C. R. 627, reversing 51 Fed. Rep. 611.

¹⁹ See note 8, *supra*.

²⁰ Oregon Short Line & U. N. Ry. Co. v. Nor. Pac. Ry. Co. (1892), 51 Fed. Rep. 465, affirmed 61 Fed. Rep. 158; 9 C. C. A. 409; see also Kentucky & I. Brdg. Co. v. L. & N. Rd. Co. (1889), 37 Fed. Rep. 567, 2 L. R. A. 289, 2 I. C. R. 351.

§ 670. State Statute requiring Track Connection.

The requirement of track connections and facilities for the interchange of cars and traffic at railroad intersections which is made by a State statute does not constitute an unconstitutional regulation of commerce.²¹

²¹ *W. M. & P. Rd. Co. v. Jacobson* (1900), 179 U. S. 287; 45 L. ed. 194, 21 Sup. Ct. 115.

CHAPTER XXXVI.

CONTRACTS, AGREEMENTS AND ARRANGEMENTS BETWEEN COMMON CARRIERS.

SECTION

- 671. Copies of Contracts, Agreements, or Arrangements Between Carriers must be filed with the Commission.
- 672. When Carriers fail to agree on Divisions of Joint Rate the Commission may prescribe Proportion of such Rate to be received by each Carrier.
- 673. Elements to be Considered by the Commission in fixing the Division of Rates between Carriers.
- 674. Copies of Contracts, Agreements, or Arrangements to be Preserved as Public Records in Custody of Secretary of Commission.
- 675. Division of Proceeds of Sale of Shipment to pay Freight Charges.
- 676. Error in Sale of Passenger Tickets.
- 677. Pooling Contracts and Agreements.
- 678. Contracts between Telephone, Telegraph, and Cable Companies and Other Common Carriers.
- 679. Traffic Associations.
- 680. Legalizing Agreements for Rate Publication Recommended.

§ 671. Copies of Contracts, Agreements, or Arrangements Between Carriers must be filed with the Commission.

¶ A. PROVISION OF THE STATUTE.

The Act to Regulate Commerce provides that every common carrier subject to the provisions thereof shall file with the Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of the Act to which it may be a party.¹

¶ B. CONTRACTS AND AGREEMENTS FOR DIVISION OF JOINT RATES AND FARES MUST BE FILED.

A contract, agreement, or arrangement between common

¹ Act to Regulate Commerce. Section 6.

carriers governing the division between them of joint rates or fares on interstate business is a contract, agreement, or arrangement in relation to traffic within the meaning of Section 6 of the Act to Regulate Commerce, and a copy thereof must be filed with the Commission. Where such contract, agreement, or arrangement is verbal or is contained in correspondence between the parties or rests on their custom and practice, a memorandum of its terms must be filed with the Commission.²

Answering many inquiries as to just what is desired under this rule, the Commission stated that when the agreement or arrangement under which divisions are made is in the form of a contract or formal agreement or recorded memorandum, a copy of each such contract, agreement, or memorandum is to be filed with the Commission: Where such agreement is made by correspondence or verbally, a concise memorandum of the basis and general terms and application of the arrangement or practice is to be filed with the Commission. The filing of the division sheets themselves is not desired.³

¶ C. RAILROAD AND TELEGRAPH LINES SUBJECT TO THE GOVERNMENT-AIDED RAILROAD ACT WERE REQUIRED TO FILE COPIES OF THEIR CONTRACTS.

See *Section 753, post*.

§ 672. When Carriers fail to agree on Divisions of Joint Rate the Commission may prescribe Proportion of such Rate to be received by each Carrier.

The statute provides that whenever the carrier or carriers, in obedience to an order of the Commission establishing just and reasonable rates or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be re-

² Rule 209, Con. Rul. Bul. No. 4 (Nov. 16, 1906); Rule 32, Tariff Circular 16-A.

³ *Ibid*.

ceived by each carrier party thereto, which order shall take effect as a part of the original order.⁴

§ 673. Elements to be Considered by the Commission in fixing the Division of Rates between Carriers.

In fixing a division between carriers of joint rates ordered to be established, Section 15 of the Act implies that it is the duty of the Commission to take into consideration all the circumstances, conditions, and equities fairly affecting their several interests, and precludes the idea that the divisions must be adjusted on a mileage or any other fixed basis.

Where a carrier not only furnishes local markets reached by no other road, but also serves a producing territory ample to supply the needs of those markets, no division can in justice be made that does not fully protect its revenues so far as that can be done reasonably and without altogether overlooking the earnings of its connections or withdrawing from producing shippers or consumers their right to the transportation service at reasonable rates.⁵

§ 674. Copies of Contracts, Agreements, or Arrangements to be Preserved as Public Records in Custody of Secretary of Commission.

The Act to Regulate Commerce provides that the copies of all contracts, agreements, or arrangements between common carriers filed with the Commission as provided therein, shall be preserved as public records in the custody of the secretary of the Commission.⁶

§ 675. Division of Proceeds of Sale of Shipment to pay Freight Charges.

A shipment refused by the consignee and upon which demurrage had accrued was sold by the delivering carrier, but did not realize the amount of the transportation charges and the amount paid for unloading. Upon the request of the

⁴ Act to Regulate Commerce. Section 15.

⁵ *Star Grain & Lumber Co. et al. v. A. T. & S. F. Ry. Co. et al.*, 14 I. C. C. R. 364.

⁶ Act to Regulate Commerce. Section 16.

carrier, the Commission declined to express its views as to the manner in which the proceeds of the sale should be divided among the several carriers participating in the movement, that being a matter to be determined by the interested carriers for themselves.⁷

§ 676. Error in Sale of Passenger Tickets.

A station agent inadvertently failed to indorse "Colonist Ticket" on a regular ticket sold upon a published colonist rate. *Held*, That the connecting carriers must be paid their full proportion of the first class rate, but that the Commission would not intervene between the initial carrier and its agent.⁸

§ 677. Pooling Contracts and Agreements.

See *Chapter 38, post*, for full consideration.

§ 678. Contracts between Telephone, Telegraph, and Cable Companies and Other Common Carriers.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*) provides that nothing contained therein shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers, for the exchange of services.

§ 679. Traffic Associations.

See *Section 745, post*.

§ 680. Legalizing Agreements for Rate Publication Recommended.

In his recent message to Congress, President Taft said:⁹ "The Republican platform of 1908 expressed the belief that the Interstate Commerce Law should be further amended so as to give the railroads the right to make and publish traffic agreements subject to the approval of the Commission, but

⁷ Rule 41, Con. Rul. Bul. No. 4 (March 3, 1908).

⁸ Rule 69, Con. Rul. Bul. No. 4 (May 4, 1908).

⁹ Message of January 7, 1910.

maintaining always the principal of competition between naturally competing lines and avoiding the common control of those lines by any means whatsoever. In view of the complete control over ratemaking and other practices of interstate carriers, established by the Acts of Congress and as recommended in this communication, I see no reason why agreements between carriers subject to the Act, specifying the classifications of freight and the rates, fares and charges for transportation of passengers and freight should not be permitted, provided copies of such agreements be promptly filed with the Commission but subject to all the provisions of the Interstate Commerce Act and subject to the rights of any parties to such agreement to cancel it, as to all or any of the agreed rates, fares, charges or classifications by thirty days' notice in writing to the other parties and to the Commission."

CHAPTER XXXVII.

CAR PER DIEM CHARGE.

SECTION

- 681. Origin of the Per Diem Rate for the Use of Equipment.
- 682. Rate of Per Diem.
- 683. Per Diem Charge Strictly a Rental.
- 684. Duty of Carriers to provide Compensation for Use of Foreign Cars.

§ 681. Origin of the Per Diem Rate for the Use of Equipment.

It is not many years since the railroad which originated freight transferred goods at its junctions to the cars of the connecting road. Each railroad was thus made to supply its own equipment. This was an uneconomical and time-wasting method, and so out of their own necessity and to give a prompter service to the shipping public, the railroads developed the practice which generally obtains today of permitting cars to pass onto the track of their connecting roads and making a charge for the use of the equipment.¹ Under this system the present method of hauling freight over several connecting lines has made possible that great body of through transportation which is perhaps the most distinctive feature of American railroading.² The charge assessed for the use of cars was usually fixed at $\frac{3}{4}$ cent per car per mile; the road on whose line the mileage accrued paying the charge to the owner of the car. This car varied, however according to the style and nature of the equipment, viz., a refrigerator car commanded a higher mileage rate than a box or gondola car.

The plan of paying for borrowed equipment by the mile was in force ever since cars began to be sent from one rail-

¹ In the Matter of Car Shortage and other Insufficient Transportation Facilities, 12 I. C. C. R. 561.

² Ibid.

road to another.³ This method, however, led to serious abuses. The owner of the car was powerless either to get his car returned or to test the accuracy of the records by which he was paid for its use, so that cars were often kept out of his possession for months, being used by the consignees as free storehouses for freight, or by the borrowing railroad company in local service at an unreasonably low rental, or as has occurred in consequence of errors in the accounts, without any rental at all.⁴

This state of affairs led the American Railway Association early in the year 1902, to inaugurate a system by which the interchange of freight cars between the different railroads of the country was put on a business basis, a change which appears to be a definite reform and in the interest of efficient service and upright dealing between carriers.⁵

The reform consisted in the adoption of a rule to pay by the day instead of by the mile. The owner can himself keep account of the number of days a car is absent from the home line—thus insuring accuracy; while the fact that a borrowed car must be paid for at the same rate when standing idle as when used in profitable service spurs the borrower to promptly return it when it has completed the service for which it was borrowed. The older plan put a premium on dilatory return, while the new plan puts a premium on prompt return.⁶

The interchange of cars is now almost wholly unrestricted throughout the United States; every road is a constant borrower from and lender to, not only its immediate connections, but from and to lines in distant States.

The owners of the cars are apprised of their various movements and whereabouts by a system of reports rendered by the car accountant or superintendent of car service of the various roads over which the cars move.

³ Sixteenth Annual Report of I. C. C. (1902).

⁴ Ibid.

⁵ Ibid.

⁶ Ibid.

§ 682. Rate of Per Diem.

The interchange per diem rate is generally 20 cents per car per day.⁷ Some roads charge a penalty in addition to this rate for the detention of the car after the expiration of a certain period. For example, one road charged 20 cents per car per day for only thirty days, and after that time the borrower must pay a dollar a day for its use.⁸

Within this period of thirty days is included all time occupied in transportation without any deduction.⁹

§ 683. Per Diem Charge Strictly a Rental.

As between the railroads the per diem charge is made exclusively for the use of the car.¹⁰ Some railroads are borrowers and others lenders of cars under the present system of interchange which is in vogue between connecting lines and it is hardly credible that the lender would furnish the borrower with equipment for much less than a fair compensation.¹¹

§ 684. Duty of Carriers to provide Compensation for Use of Foreign Cars.

Section 1 of the Act to Regulate Commerce (*as amended June 18, 1910*), after providing that carriers shall make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used in the operation of through routes, makes it the duty of carriers to provide for reasonable compensation to those entitled thereto.

⁷ See note 1, *supra*.

⁸ *Michie v. N. Y. N. H. & H. R. R. Co.* (1907), 151 Fed. Rep. 694.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Kehoe & Co. v. C. & W. C. R. Co.* (1905), 11 I. C. C. R. 166.

CHAPTER XXXVIII.

POOLING CONTRACTS AND AGREEMENTS.

SECTION

- 685. Pooling of Freights and Division of Earnings Forbidden.
- 686. Penalty for Violation of "pooling" Prohibition of the Statute.
- 687. Nature and Varieties of Pools.
- 688. Purpose of Prohibition against pooling.
- 689. Pooling Agreements which are not subject to the Act to Regulate Commerce.
- 690. Agreement for apportioning Immigrant Traffic.
- 691. Attitude of Congress at Time of Passage of Law Prohibiting Pooling.
- 692. Agreement for Maintenance of Rates not governed by Act to Regulate Commerce.
- 693. Establishment of Through Route by Connecting Carriers and Reserving Right to Route Shipments as Condition of Guaranteeing Through Rate not in Violation of the Statute.

§ 685. Pooling of Freights and Division of Earnings Forbidden.

The fifth section of the Act to Regulate Commerce provides: "That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense."

Any arrangement, oral or otherwise, or combination, which has, for its purpose and eventuates in the pooling of freights of different and competing railroads, is within the prohibition of the Interstate Commerce Act.¹

¹ In Re Pooling Freights (1902), 115 Fed. Rep. 588.

The word "freights" as used in the statute means the commodities carried, and not the compensation paid for such carriage.²

§ 686. Penalty for Violation of "pooling" Prohibition of the Statute.

See *Section 777, post.*

§ 687. Nature and Varieties of Pools.

¶ A. POOL DEFINED.

A railroad pool has been defined as an agreement between competing railroads, to apportion the competitive business.³ More precisely, it is an agreement made by several railroads competing for business to allow to each a stated percentage of the whole competing traffic, or of the receipts thereof, together with a mutual guaranty that each road shall receive its share.⁴

¶ B. VARIETIES OF POOLS.

The statute contemplates two methods of pooling, both of which are prohibited:

First, a physical or traffic pool, which means a distribution by the carriers of property offered for transportation among different and competing railroads in proportions and on percentages previously agreed upon;⁵

Second, a money pool, which is described best in the language of the statute, "to divide between them (different and competing railroads) the aggregate or net proceeds of the earnings of such railroads, or any portion thereof."⁶ Under such an arrangement the gross or net earnings, as the case may be, are divided in certain percentages, entirely irrespective of the amount of business which may happen to pass over the several lines.⁷

² *I. C. C. v. Southern Pacific Co. et al.* (1904), 132 Fed. Rep. 829.

³ Final Report of Industrial Commission, Vol. 19.

⁴ "American Railroad Rates," by Judge Walter Chadwick Noyes.

⁵ See note 1, *supra*.

⁶ *Ibid.*

⁷ See note 3, *supra*.

§ 688. Purpose of Prohibition against pooling.

The Interstate Commerce Law was intended to encourage normal competition. It forbids pooling for the very purpose of allowing competition to have effect.⁸

§ 689. Pooling Agreements which are not subject to the Act to Regulate Commerce.**¶ A. CONTRACT BETWEEN WATER CARRIERS.**

The pooling of traffic by water carriers is plainly a matter over which the Interstate Commerce Commission has no jurisdiction, for the Act prohibits pooling only as to "railroads." A pooling of ocean freights or of water freights of any character was evidently not in the mind of Congress when it adopted this provision.⁹

¶ B. CONTRACT BETWEEN PIPE LINE AND RAILROAD.

An agreement for the pooling of traffic between a carrier by rail subject to the Act to Regulate Commerce and a carrier by pipe line does not fall within the description of contracts prohibited by Section 5 of that Act.¹⁰

¶ C. INTRASTATE TRAFFIC.

Traffic carried only within the territorial limits of a State is not interstate in character, and the instrumentality of its transportation is not subject to the provisions of the statute against pooling in respect to such traffic.¹¹

§ 690. Agreement for apportioning Immigrant Traffic.

By mutual agreement between carriers operating from the Atlantic seaboard to western points the immigrant traffic through New York City and other Atlantic ports was divided between such carriers in agreed proportions based upon the

⁸ East Tennessee, Va. & Ga. Ry. Co. v. I. C. C., 99 Fed. Rep. 52, 61, 39 C. C. A. 413.

⁹ Cosmopolitan Shipping Co. v. Hamburg-American Line (1908), 13 I. C. C. R. 266.

¹⁰ Independent Refiners' Assn. v. W. N. Y. & P. Rd. Co. et al. (1892), 5 I. C. C. R. 415; 4 I. C. R. 162.

¹¹ See note 1, *supra*.

proportion of the domestic passenger traffic done by each line. Necessary expenses were apportioned among the lines according to gross earnings on their traffic. Since the passage of the Act to Regulate Commerce there had been no money pool, nor were deficiencies made up by the payment of money differences; the arrangement of distribution was a purely physical one, the immigrants being forwarded in equal proportions by the various trunk lines if their domestic through passenger business had been, approximately, proportionally divided. If any road or roads showed a falling off from their average of general through passenger business, the percentage of immigrant traffic through their territory was only distributed to the extent of making their proportion good, and when that was accomplished it was equally distributed as before. The immigrants were carried from the seaboard at domestic published rates. The arrangement adopted by the carriers in connection with the immigration authorities of the United States for handling immigrant business had efficiently promoted the protection and greatly improved the treatment and comfort of immigrants. The Commission in passing upon the arrangement said:

“Section 5 of the Act to Regulate Commerce provides:

“‘That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of *freights* of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.’

“It will be seen that it was deemed by the authors of the Act essential to provide specifically against a division of freight in kind as well as against the pooling or division of the earnings therefrom, but for some reason they did not not provide against a division of passengers between competing roads. The omission to do the latter while doing the former would seem to indicate that it is not improbable that

they deemed the general prohibition in this section against a division between them of the aggregate or net earnings of such railroads, or any portion thereof, would be sufficient to prevent any known or probable method of pooling passenger traffic that was or could be made effective.

“The understanding and intent of legislators may sometimes be gathered from the expressions in debate while the measure is under consideration; and while these are but individual opinions upon construction of language and serve in no case to lend an interpretation or color not consistent with the actual terms of the law, are of service in illustrating the wrongs to be cured and the aims of those who seek to right them.

“The general feeling against pooling arrangements was very bitter immediately preceding and at the time of the passage of the Act. So obnoxious had some of the more aggravated of these conditions become that they were not only severely denounced on several occasions, but the States had been awakened to action against them both in their constitutions and in their courts.

“A list of the more important pools was given by the author of the Reagan Bill in July, 1886, in his presentation of the necessity and purposes of the proposed act for railway regulation. Included in the list was one dated 1879 and another 1885, both of which provided and guaranteed a fund to maintain a pool having for its object the control or division of the westbound passenger traffic as well as of freights, and there was indication that the subject of passenger pools was at least under consideration. Whether the language as finally adopted accomplished the purpose of forbidding all pools, freight or passenger, was a matter upon which there was even then division of opinion.

“In the debate upon the conference report of the two Houses of Congress, a representative from Iowa (Mr. Weaver) insisted that the language of the section referred to freight pools, while a representative from Georgia (Mr. Crisp) was as firm that it also applied ‘if it were the pooling of passenger fares.’ ‘But,’ he added, ‘did the gentleman ever know of a passenger

pool?'—as if it were useless to strive over a theoretical situation.

“It seems clear to us that the section quoted forbids a division of ‘the aggregate or net proceeds of the earnings of such railroads or any portion thereof’ of competing carriers, whether such earnings arise from freight or passenger business, and that it also forbids a division of freights in kind by any device. But it is not clear that Congress did not regard the division of the passenger traffic in kind as impracticable, and, therefore, not necessary to include within the prohibition. Nor is it believed that such a practice exists or could be made effective in respect to any other class of passenger business, except that of immigrants; and while, as shown, the arrangement under discussion purports to be for the division of westbound passenger traffic, including domestic as well as immigrant, it is also apparent that in its operation there is practically only a distribution or division of the immigrants which, however, is based upon the propositions of the domestic traffic done by each line. This arrangement is no doubt in restraint of competition, and if the question of the reasonableness of the rates was under consideration would have bearing upon that question; but there is no division of the aggregate or net proceeds, or any part thereof, between the lines, unless as is contended, the division of passengers before they have been carried is, in contemplation of law, a division of the earnings therefrom. Against this contention is the fact that there is specific prohibition against the pooling or division of freights and the omission of a like specific provision in respect to passengers. In view of this fact and the further fact that the things forbidden by this section of the Act are made criminal, it is doubtful, at least, whether such a division of the passengers as has been shown to exist under this arrangement is covered by the prohibitions of this section. If the practice was effective in respect to domestic business so as to indicate that it might become extensive, we might feel constrained to resolve the doubt against the practice in an effort to uproot it, for it must be conceded that if it were practicable to make effective such ar-

rangements in respect to all, or a large part of the domestic passenger business, what we understand to be the purposes of the law would be largely defeated, but as above indicated, it is not believed that it can ever be made effective to any considerable extent in the domestic passenger business and it is not improbable that this is the reason that this section was framed at it is.’¹²

§ 691. Attitude of Congress at Time of Passage of Law Prohibiting Pooling.

“In the discussions which preceded the passage of the present law the advocates of Government regulations were entirely agreed as to the gravity and extent of the evils then existing, but there was radical difference of opinion as to whether the legislative remedies to be applied should include a prohibition of those agreements and arrangements between competing carriers which are commonly described as ‘pools.’

“In January, 1886, the Senate Committee on Interstate Commerce said in its report:

“The majority of the committee are not disposed to endanger the success of the methods of regulation proposed for the prevention of unjust discrimination by recommending the prohibition of pooling, but prefer to leave that subject for investigation by the Commission when the effects of the legislation herein suggested shall have been developed and made apparent.

“During the debates in Congress, above referred to, these pooling contracts were criticised with great variety of expression as conspiracies in restraint of trade, as dangerous monopolies, as ‘rings’ and ‘corners.’ They were alleged to have the effect of giving the railroads control of the transportation, commerce, and wealth of the country, and to threaten the liberties of the people by ultimately dominating the measures and policy of the great political parties. It was asserted that such agreements were forbidden by the common law, by the constitutions of many of the States, and by a long line of judicial decisions; that their effect was to substitute monopoly for competition, extortion for reasonable

¹² Re Transportation of Immigrants from New York (1904), 10 I. C. C. R. 13.

rates, and discrimination for equal treatment. It was claimed that the publication of tariffs and the uniformity of charges which other provisions of the law made mandatory would be aided in their beneficial purposes by prohibiting pooling rather than by permitting it; that pools had proven to be expensive, troublesome and demoralizing to operating officials, and that they had often resulted in unremunerative rates between competing points, the losses from which were recouped by excessive charges at local stations. In short, the belief was entertained that the legislation of these agreements was contrary to the general policy of the proposed statute.

“On the other hand, those who advocated some system of pooling contended that if these contracts were controlled by law they would constitute a practical defense against rate-cutting and similar devices; that they sustained and secured reasonable and stable rates; that they were absolutely necessary to avoid bankruptcy in many cases by preventing ruinous competition; that the evils arising from these arrangements were either imaginary or would be cured by the other provisions of the law; that they were simply agreements to apportion competitive business and had nothing to do with the fixing of rates; that they were wanting in the essential characteristics of a pool; that only contracts in total restraint of trade were illegal; that partial and reasonable restraints when founded upon a good consideration were valid, and that such agreements neither enhanced nor depressed prices, nor controlled either production or markets.

“While these differences of opinion existed in both branches of Congress, the argument against legalizing these arrangements seem to have prevailed, and after prolonged discussion, consideration, and conference, the present law was enacted, the fifth section of which expressly prohibits all contracts, agreements, or combinations between carriers for the pooling of freights or the division of traffic earnings.”¹³

¹³ Sixth Annual Report of I. C. C. (1892). See discussion on Pools in Final Report of Industrial Commission, Vol. 19; “American Railroad Rates” by Judge Walter Chadwick Noyes; First Annual Report of I. C. C. (1887).

§ 692. Agreement for Maintenance of Rates not governed by Act to Regulate Commerce.

The fifth section of the Act to Regulate Commerce prohibits what is termed "pooling," but there is no express provision in that Act prohibiting the maintenance of rates among competing roads by making an agreement for that purpose.¹⁴ The Act to Regulate Commerce was not directed to securing uniformity of rates to be charged by competing railroads, and that statute does not authorize competing and nonconnecting roads to make such an agreement.¹⁵

Agreements for the establishment and maintenance of rates between competing roads and agreements for the prevention of competition are in violation of the Sherman Anti-trust Act¹⁶ and the reader is therefore referred to the chapter on that subject, see "*Traffic Association*," Section 745, *post*.

§ 693. Establishment of Through Route by Connecting Carriers and Reserving Right to Route Shipments as Condition of Guaranteeing Through Rate not in Violation of the Statute.

The pooling of freights of competing railroads forbidden by Section 5 of the Act to Regulate Commerce is not accomplished by the adoption by common carriers, as part of an agreement for a through rate from California to the East, for oranges and other citrous fruits, of a rule under which the right of routing beyond its own terminal is reserved to the initial carrier as the condition of guaranteeing the through rates to the shipper, even though the initial carrier promises fair treatment to the connecting lines, and carries out such promise, where such rule has served, as was intended, to

¹⁴ United States v. Trans-Missouri Freight Association (1896), 166 U. S. 290, 17 Sup. Ct. Rep. 540, 41 L. ed. 1007, reversing 58 Fed. Rep. 58, 7 C. C. A. 15 and 53 Fed. Rep. 440.

¹⁵ Ibid.

¹⁶ "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies" (26 Stat. at L. 209, Chap. 647; Rev. Stat. Supp. p. 762), passed July 2, 1890; known as the "Sherman Anti-trust Act."

break up rebating by the connecting lines, and, in its practical operation, the actual routing is generally conceded to the shipper, and his requests to direct shipments en route are usually allowed.¹⁷

¹⁷ *Southern Pacific Company et al. v. I. C. C.* (1905), 200 U. S. 536; 50 L. ed. 585, 26 Sup. Ct. 330, reversing 132 Fed. Rep. 829.

CHAPTER XXXIX.

ACCOUNTS, RECORDS AND MEMORANDA OF COMMON CARRIERS.

SECTION

- 694. Uniform System of Accounts.
- 695. Power of Commission to prescribe Forms of Accounts, Records, etc.
- 696. Access of Commission to Accounts, Records, etc.
- 697. Carriers may not keep other Accounts than Those Prescribed by the Commission.
- 698. Commission may Employ Special Examiners to inspect Accounts and Records of Carriers.
- 699. Punishment of Carrier by Forfeiture for Failure to keep Accounts or Records as Prescribed by Commission or Allow Inspection thereof.
- 700. Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for keeping other Accounts than those Prescribed by Commission.
- 701. Punishment of Special Examiner who divulges Facts or Information without Authority.
- 702. Destruction of Accounts, Records and Memoranda.

§ 694. Uniform System of Accounts.

¶ A. POWER OF COMMISSION TO PRESCRIBE UNIFORM SYSTEM OF ACCOUNTS.

The Act to Regulate Commerce provides that the Interstate Commerce Commission, may, in its discretion, for the purpose of enabling it the better to carry out the purposes of the Act, prescribe a period of time within which all common carriers subject to the provisions of the Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.¹

¹ Act to Regulate Commerce. Section 20.

¶ B. UNIFORM RULES OF ACCOUNTING PRESCRIBED.

In the exercise of this authority, the Commission has promulgated detailed accounting rules governing the operations of all common carriers subject to the provisions of the Act to Regulate Commerce. The Commission also issues an Accounting Bulletin which contains a series of questions submitted to the Division of Statistics and Accounts and decisions thereto relating to these rules. None of the accounting rules have been embodied in this book for the reason that it would be without the scope of the work. Anyone interested in this branch of transportation may readily obtain a complete set of these rules upon application to the Interstate Commerce Commission, Division of Statistics and Accounts.

§ 695. Power of Commission to prescribe Forms of Accounts, Records, etc.

The statute provides that the Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of the Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of money.²

§ 696. Access of Commission to Accounts, Records, etc.

The statute provides that the Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to the Act.³

§ 697. Carriers may not keep other Accounts than Those Prescribed by the Commission.

The statute makes it unlawful for any carrier subject to its provisions to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission.⁴

² Act to Regulate Commerce. Section 20.

³ Ibid.

⁴ Ibid.

§ 698. Commission may Employ Special Examiners to inspect Accounts and Records of Carriers.

The Act authorizes the Commission to employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by carriers subject to its jurisdiction.⁵ This provision applies to receivers of carriers and operating trustees.⁶

§ 699. Punishment of Carrier by Forfeiture for Failure to keep Accounts or Records as Prescribed by Commission or Allow Inspection thereof.

See *Section 770, post.*

§ 700. Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for keeping other Accounts than those Prescribed by Commission.

See *Section 771, post.*

§ 701. Punishment of Special Examiner who divulges Facts or Information without Authority.

See *Section 772, post.*

§ 702. Destruction of Accounts, Records and Memoranda.

¶ A. WHEN DESTRUCTION OF PAPERS PERMISSIBLE.

The Act as amended February 25, 1909, provides that the Commission may, in its discretion, issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.⁷

⁵ Act to Regulate Commerce. Section 20.

⁶ *Ibid.*

⁷ *Ibid.*

¶ B. RECORDS AND MEMORANDA TOUCHING ISSUANCE OF PASSES.

The Commission has enjoined carriers against the destruction of records or memoranda touching the issuance of passes, and the passes themselves, coming into the hands of the carriers after use, for a period of not less than five years until further order of the Commission.⁸

⁸ Rule 95, Con. Rul. Bul. No. 4 (June 30, 1908).

CHAPTER XL.

REPORTS OF CARRIERS TO THE INTERSTATE COMMERCE COMMISSION.

SECTION

- 703. Annual Reports of Carriers to the Interstate Commerce Commission.
- 704. Monthly or Periodical or Special Reports of Carriers to the Interstate Commerce Commission.
- 705. Apportionment of Total Operating Expenses between Freight and Passenger Service not Practicable.
- 706. Before whom Acknowledgments to Reports may be taken.
- 707. Reports of Government-Aided Railroad and Telegraph Lines to the Commission.
- 708. Accident Reports.
- 709. State Railroads engaged in Interstate Commerce required to file Reports.
- 710. State Railroads engaged exclusively in Intrastate Commerce not required to file Reports with Interstate Commerce Commission.
- 711. Person who has severed his Connection with a Railroad Corporation, not required to make Reports.
- 712. Reports of Carriers under the Hours-of-Service Law.
- 713. Copies of Annual Reports of Carriers to be preserved as Public Records in Custody of the Secretary of the Commission.
- 714. Certified Copies of Reports as Prima Facie Evidence.

§ 703. Annual Reports of Carriers to the Interstate Commerce Commission.

¶ A. COMMISSION AUTHORIZED TO REQUIRE ANNUAL REPORTS.

The Act to Regulate Commerce authorizes the Interstate Commerce Commission to require annual reports from all common carriers subject to the provisions of such Act, and from the owners of all railroads engaged in interstate commerce as defined by the Act.¹

¹ Act to Regulate Commerce. Section 20 (as amended June 18, 1910).

In pursuance of this power the Commission requires carriers to render detailed annual reports.²

In respect to filing annual reports, the statute is mandatory, and as it has been repeatedly held by the Supreme Court of the United States that every carrier participating in the carriage of property between interstate points although its physical line is wholly within a single State, is engaged in interstate commerce, all such carriers are within the operation of the statute; it will be seen that under the provisions of the Act, hardly a carrier in the United States is exempt from the requirements to make annual reports to the Commission.³

Under the present method of conducting joint traffic, nearly every railroad, however short its line, unites in making through rates, under which it issues and receives tickets or bills of lading, in connection with roads in other States, upon which passengers and freight are transported across State boundaries; the revenues of every such road are derived, to a greater or less extent, from the traffic which is regulated by the provisions of the Interstate Commerce Law.⁴

¶ B. COMMISSION EMPOWERED TO PRESCRIBE FORM OF ANNUAL REPORTS.

The Act to Regulate Commerce authorizes the Commission to prescribe the manner in which the annual reports of carriers shall be made.⁵

Very soon after its organization, the Commission after long correspondence and consultation with expert accountants, adopted a form of annual report calculated to develop the information required by the Act.

A general basis was found in the provisions of the statute itself. The obligations imposed by State legislatures upon the various State Railroad Commissions were also important.⁶

² Eighth Annual Report of I. C. C. (1894).

³ Seventh Annual Report of I. C. C. (1893).

⁴ Second Annual Report of I. C. C. (1888).

⁵ See note 1, *supra*.

⁶ See note 4, *supra*.

This form with slight modifications, has been retained ever since, and when properly filled elicits the information required. This form is so well adapted to its purpose that it has been adopted by most of the States for the reports which are required from carriers by the laws of the States.⁷

¶ C. COMMISSION MAY REQUIRE ANY INFORMATION DESIRED.

The Commission is authorized to require from carriers specific answers to all questions upon which it may need information.⁸

¶ D. WHAT ANNUAL REPORTS SHALL CONTAIN.

The statute requires that annual reports of carriers shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders, the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balance of profit and loss; and a complete exhibit of all the financial operations of the carrier each year, including an annual balance sheet.⁹

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the Commission by order substitute that period for the year ending June thirtieth.¹⁰

The effect of this section of the Act, relative to annual reports, is to require every carrier to furnish a full and com-

⁷ See note 3, *supra*.

⁸ See note 1, *supra*.

⁹ *Ibid*.

¹⁰ *Ibid*.

plete history of the corporate organization, stock, and securities; its property, cost and value; its income, expenses, debts, and fixed charges; in short, a full exact history of the property controlled and a detailed exhibit by items of the business and financial operations for the year.¹¹

Before the passage of the Act to Regulate Commerce private enterprises had collected the figures representing the financial and business operations of railroads, but they were not furnished under the requirements of law, and therefore not subject to governmental supervision. While probably correct in the main they still lack the authenticity which attaches to sworn reports required by positive enactment. Some of the States also required sworn returns to their own officers but these reports, not embracing operations outside of the State, were of only local importance.¹²

A bureau of the Department of the Interior had for some years previous to the year 1887, been engaged in the collection of statistical information in great detail from a large number of important roads which received aid from the United States in the form of land grants and subsidies; but as stated, these statistics were confined to the Government-aided lines.¹³

The carriers themselves were accustomed to collate and present annually, for the use of directors and stockholders, information in more or less detail concerning the workings of their respective lines. Some of the information which it has been the custom of intelligently managed corporations to tabulate and make public, is of special value to their own officials and subordinates in securing the economical working of their lines, and in adjusting transportation charges; and the importance of statistics of this character is many times increased by an opportunity for comparison between results obtained upon different lines in the same or in different sections of the country. However, these reports naturally were limited in their scope and could not be said to be authentic.

¹¹ See note 3, *supra*.

¹² *Ibid*.

¹³ See note 4, *supra*.

The Senate Select Committee in its report to Congress recognized the importance of reliable and accurate information for the use of investors in railroad securities—a class of the community whose almost sole dependence in the years previous to the passage of the Act had been the unofficial though painstaking annual compilation by private enterprise of a manual,¹⁴ the great circulation of which demonstrated the necessity for its existence.¹⁵

The framers of the Act of 1887 foresaw that minute annual reports would not only be of great aid to the Commission in the performance of its duties, but also that they would be of great interest to the public generally.¹⁶

It is apparent that it was the purpose of Congress to inaugurate an annual collection of statistics, which should faithfully present the entire transactions of every railroad in the United States for the preceding year, and that the information so obtained should be authoritative and trustworthy.¹⁷

Commission may Require Additional Information.

Such reports shall also contain such information in relation to rates or regulations concerning fares or freights or agreements, arrangements or contracts affecting the same as the Commission may require.¹⁸

¶ E. WHEN ANNUAL REPORTS ARE TO BE FILED.

The annual reports as stated above, must be made out under oath and filed with the Commission, at its office in Washington, within three months after the close of the year for which the report is made.¹⁹

¹⁴ Poor's Manual of the Railroads of the United States.

¹⁵ See note 4, *supra*.

¹⁶ See note 3, *supra*.

¹⁷ See note 4, *supra*.

¹⁸ See note 1, *supra*.

¹⁹ *Ibid*.

¶ F. COMMISSION MAY EXTEND TIME FOR FILING REPORTS.

The statute gives the Commission authority to grant additional time in any case for the filing of annual reports.²⁰

¶ G. PUNISHMENT BY FORFEITURE FOR FAILURE TO FILE ANNUAL REPORT.

See *Section 769, Paragraph A, post.*

§ 704. Monthly or Periodical or Special Reports of Carriers to the Interstate Commerce Commission.

¶ A. COMMISSION MAY REQUIRE MONTHLY REPORTS.

The Commission has authority by general or special orders to require any carrier subject to the Act to file monthly reports of earnings and expenses.²¹

¶ B. COMMISSION MAY REQUIRE PERIODICAL OR SPECIAL REPORTS.

The Commission has authority by general or special orders to require any carrier subject to the Act to file periodical or special, or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires.²²

Under the authority to require special reports, the Division of Statistics and Accounts in the year 1907 made an investigation into the intercorporate relations of legally independent carriers, organized into systems for the purpose of unified and concentrated control and management, its prime purpose being to make clear the extent and character of intercorporate relationship.²³

²⁰ See note 1, *supra*.

²¹ See note 1, *supra*.

²² *Ibid.*

²³ Twenty-First Annual Report of I. C. C. (1907).

¶ C. CARRIERS' MONTHLY REPORTS TO BE FURNISHED IN
DUPLICATE.

The Commission has ordered that beginning as of January 1, 1908, monthly reports of revenues and expenses as provided for in the order of the Commission, bearing date July 10, 1907, shall be filed in duplicate, and on or before the last day of the month immediately following the month covered by the report shall be deposited in the United States Post-Office, postage prepaid, and plainly addressed to the Division of Statistics and Accounts, Interstate Commerce Commission, Washington, D. C.²⁴

¶ D. PUNISHMENT BY FORFEITURE FOR FAILURE TO FILE
MONTHLY OR SPECIAL REPORTS.

See *Section 769, Paragraph A, post.*

**§ 705. Apportionment of Total Operating Expenses between
Freight and Passenger Service not Practicable.**

Expert railway accountants agree generally that the proportions of the total operating expenses assignable to freight and passenger service cannot be ascertained or ever fairly estimated.

The Commission formerly required carriers to report estimates of the cost of the two services according to the freight and passenger mileage after assignment of those expenses belonging exclusively to each of the two great divisions of traffic, but this requirement was discontinued by the Commission after careful consideration and as the immediate result of the investigation and report by a committee of the National Association of Railway Commissioners in 1892, which found the apportionment of expenses to be merely an arbitrary division and without value, and stated that the opinions of the railway accounting officers were practically unanimous in favor of discontinuing the attempt to apportion expenses between passengers and freight traffic.²⁵

²⁴ Rule 30, Con. Rul. Bul. No. 4 (Jan. 15, 1908).

²⁵ Consolidated Forwarding Co. v. Southern Pacific Co. et al. (1905), 10 I. C. C. R. 590.

§ 706. Before whom Acknowledgments to Reports may be taken.

The oath required by the statute as aforesaid may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.²⁶

§ 707. Reports of Government-Aided Railroad and Telegraph Lines to the Commission.

See *Section 754, post.*

§ 708. Accident Reports.

¶ A. MONTHLY REPORTS OF RAILWAY ACCIDENTS.

The statute makes it the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all collisions, derailments, or other accidents resulting in injury to persons, equipment, or roadbed arising from the operation of such railroad under such rules and regulations as may be prescribed by the said Commission, which report shall state the nature and causes thereof and the circumstances connected therewith, *Provided*, that all said carriers shall be relieved from the duty of reporting accidents in their annual financial and operating reports made to the Commission.²⁷

¶ B. FAILURE TO MAKE REPORT WITHIN THIRTY DAYS AFTER END OF EACH MONTH A MISDEMEANOR.

See *Section 769, Paragraph A, post.*

¶ C. REPORTS NOT TO BE USED IN EVIDENCE AGAINST THE CARRIER.

The statute provides that neither said report nor any part thereof shall be admitted as evidence or used for any purpose against such railroad so making such report in any suit or

²⁶ See note 1, *supra*.

²⁷ Section 1. Accident-Reports Act, approved May 6, 1910.

action for damages growing out of any matter mentioned in said report.²⁸

¶ D. COMMISSION TO PRESCRIBE FORM OF REPORT.

The Interstate Commerce Commission is authorized to prescribe for the common carriers subject to the provisions of the statute a method and form for making the reports as stated above.²⁹

¶ E. PURPOSE OF ACCIDENT REPORTS.

By the statute³⁰ referred to above the Commission is required to gather statistics of all collisions and derailments on railroads doing interstate business, and of accidents to passengers and to employees on duty; the railroad companies are required to report the accidents, stating the nature and cause, in reports of such form as the Commission shall prescribe.³¹

The Commission in one of its annual reports to Congress³² stated: "The primary object of the statute is, obviously, to promote the safety of passengers and of railroad employes; and this object is to be accomplished, so far as these records can accomplish it, by making the most instructive exhibit possible of those accidents which are preventable. Experience has shown that some classes of accidents, including many personal casualties in which the person injured is himself chiefly at fault, occur in such uniform percentages, year after year, in proportion to the total number of persons employed (or, in the case of passengers, to the total number transported), that they may be looked upon as unavoidable. These, under the Act, are now reported to the Commission in large numbers; yet it is not apparent that any useful purpose would be subserved by publishing the details of cases of this kind, as is attempted by some public authorities."

²⁸ Section 4. Accident-Reports Act, approved May 6, 1910.

²⁹ Section 5. Accident-Reports Act, approved May 6, 1910.

³⁰ Accident-Reports Act, approved May 6, 1910—Public No. 165.

³¹ Fifteenth Annual Report of I. C. C. (1901).

³² Ibid.

§ 709. State Railroads engaged in Interstate Commerce required to file Reports.

Under the Act to Regulate Commerce, as amended June 29, 1906, a carrier by railroad operating entirely within a State becomes subject to the provisions of the Act if it engages in interstate transportation, although it has entered into no arrangement with any other carrier by railroad or water for the movement of traffic between points upon its line and points without the State.

The movement of freight from a point in one State to a point in another State by rail must be regarded as an entirety and every road participating in that movement thereby becomes subject to the Act to Regulate Commerce even though its service is performed entirely within a single State.³⁴

A railroad company whose road lies entirely within the limits of a single State becomes subject to the Act to Regulate Commerce by participating in a through movement of traffic from a point in the one State to a point in the State within which it is located, although its own service is performed entirely within the latter State.³⁵ Such common carriers therefore are required to file their annual reports with the Interstate Commerce Commission.

§ 710. State Railroads engaged exclusively in Intrastate Commerce not required to file Reports with Interstate Commerce Commission.

A railroad lying wholly within a State, which transports freight, whether coming from within or without the State, solely on local bills of lading, under special contract limited to its own line and without dividing charges with any other carrier or assuming any other obligations to or for them, does not come within the provisions of the Interstate Commerce Act and is not bound to make any report of its business to the Interstate Commerce Commission.³⁶

³⁴ Leonard v. K. C. S. Ry. Co. et al. (1908), 13 I. C. C. R. 573.

³⁵ Baer Bros. Merc. Co. v. Mo. Pac. Ry. Co. et al. (1908), 13 I. C. C. R. 329.

³⁶ United States, ex rel. Interstate Commerce Commission, v. Chicago, K. & S. R. Co. (1897), 81 Fed. Rep. 783.

A railroad company whose line is wholly within a single State, and which, although it carries freight to points beyond such State, never issues bills of lading to points beyond its own line, receives no freight on through bills of lading, and has no arrangement with other roads for a conventional division of charges, or for a common control or arrangement is not within the purview of the Act to Regulate Commerce and need not file its annual report with the Interstate Commerce Commission.³⁷

§ 711. Person who has severed his Connection with a Railroad Corporation, not required to make Reports.

Where a writ of mandamus, commanding a railway company to make out its annual report, is served on the secretary and treasurer, who shows that he has not the possession of the books necessary to enable him to make out the report and that he has resigned, and is no longer connected with the railroad, a motion to commit for contempt is denied.³⁸

§ 712. Reports of Carriers under the Hours-of-Service Law.

The Commission has held that in as much as the Act to Regulate Commerce empowers the Commission, in the administration of that law, to require reports under oath, a similar authority may lawfully be exercised by the Commission in the execution of the Hours-of-Service Law.³⁹

§ 713. Copies of Annual Reports of Carriers to be preserved as Public Records in Custody of the Secretary of the Commission.

The statute provides that the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as required by the provisions of the Act, shall be preserved as public records in the custody of the secretary of the Commission.⁴⁰

³⁷ I. C. C. v. Bellaire, Z. & C. Ry. Co. (1897), 77 Fed. Rep. 942.

³⁸ United States ex rel. Interstate Commerce Commission v. Seaboard Ry. Co. of Alabama (1898), 85 Fed. Rep. 955.

³⁹ Twenty-Second Annual Report of I. C. C. (1908).

⁴⁰ Act to Regulate Commerce. Section 16.

§ 714. Certified Copies of Reports as Prima Facie Evidence.

The statute provides that the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, and preserved in the custody of the secretary, shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said reports, made public records as stated above, certified by the secretary under its seal, shall be received in evidence with like effect as the originals.⁴¹

⁴¹ Act to Regulate Commerce. Section 16.

CHAPTER XII.

COMMODITIES CLAUSE.

SECTION

715. Provision of the Statute Prohibiting Railroad Carriers from Transporting Commodities in which they are Interested.

716. Constitutionality and Interpretation of the Statute.

§ 715. Provision of the Statute Prohibiting Railroad Carriers from Transporting Commodities in which they are Interested.

The Act to Regulate Commerce as amended June 29, 1906, provides that:¹

“From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.”

§ 716. Constitutionality and Interpretation of the Statute.

The Supreme Court of the United States in holding the above statute constitutional and construing its terms, held,² that:

¹ Act to Regulate Commerce. Section 1. (34 Stat. at L. 584, Chap. 3591, U. S. Comp. Stat. Supp. 1907, p. 892.)

² United States, ex rel. Attorney General, v. Delaware & Hudson Co. (1909), 213 U. S. 366, 53 L. ed. 836, 29 Sup. Ct. 527, reversing 164 Fed. Rep. 215, in which the Circuit Court of Appeals decided against the constitutionality of the provision, because, as it was alleged, it deprived the corporations of their liberty and of their property.

The dissociation of railway companies prior to transportation from the articles or commodities transported, whether such association results from manufacture, mining, production, or ownership, or interest, direct or indirect, is the common purpose of the provisions of the Hepburn Act of June 29, 1906, making it unlawful for a railway carrier to transport in interstate commerce, articles or commodities "manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect."

Transportation when the thing to be transported has been manufactured, mined, or produced by the carrier or under its authority, and at the time of transportation the carrier has not, in good faith, before the act of transportation, dissociated itself therefrom, or when the carrier owns the thing to be transported, in whole or in part, or when the carrier, at the time of transportation, has an interest therein, direct or indirect, in a legal or equitable sense, is all that is forbidden by the provisions of the Hepburn Act of June 29, 1906, making it unlawful for a railway carrier to transport in interstate commerce, articles or commodities "manufactured, mined, or produced by it or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect."

The ownership by a railway carrier of stock in a *bona fide* corporation manufacturing, mining, producing, or owning the commodity carried is not the "interest, direct or indirect," in such commodity, forbidden to the carrier by the Hepburn Act of June 29, 1906, but such words are to be taken as embracing only a legal or equitable interest in the commodities to which they refer.

Congress could properly enact, as a regulation of commerce, so much of the Hepburn Act of June 29, 1906, as forbids a railway carrier from transporting articles or commodities in interstate commerce when such article or commodity has been manufactured, mined, or produced by the carrier, or under its authority, and, at the time of transportation such carrier has not in good faith, before the act of trans-

portation, dissociated itself therefrom, or when the carrier owns the article or commodity to be transported, in whole or in part, or when the carrier, at the time of transportation, has an interest therein, direct or indirect, in a legal or equitable sense, although, by existing state legislation, such carrier may have a lawful right of ownership of or association with the articles or commodities upon which these provisions operate.

Railway companies enjoying the right, under existing state legislation, of ownership of or association with the articles or commodities carried, are not denied the due process of law guaranteed by the United States Constitution, Fifth Amendment, by so much of the provision of the Hepburn Act of June 29, 1906, as forbids a railway carrier from transporting articles or commodities in interstate commerce when such article or commodity has been manufactured, mined, or produced by the carrier or under its authority, and, at the time of transportation, such carrier has not, in good faith, before the act of transportation, dissociated itself therefrom, or when the carrier owns the article or commodity to be transported, in whole or in part, or when the carrier, at the time of transportation, has an interest therein, direct or indirect, in a legal or equitable sense.

Exception in Favor of Timber and Manufactured Products thereof.

The exception in favor of timber and manufactured products thereof, contained in the provisions of the Hepburn Act of June 29, 1906, forbidding railway carriers from transporting in interstate commerce, articles or commodities with which they are associated, or in which they are interested, does not render the statute invalid for discrimination.

The following is a summary of Mr. Justice White's decision :

"1. The claim of the Government that the provisions contained in the Railroad Rate Act approved June 29, 1906, commonly called the commodities clause, prohibits a railway company from moving commodities in interstate commerce because the company has manufactured, mined, or produced them, or owned them in whole or in part, or has had an in-

terest, direct or indirect, in them wholly irrespective of the relation or connection of the carrier with the commodities at the time of transportation, is decided to be untenable. It is also decided that the provision of the commodities clause relating to interest, direct or indirect, does not embrace an interest which a carrier may have in a producing corporation as the result of the ownership by the carrier of stock in such corporation irrespective of the amount of stock which the carrier may own in such corporation, provided the corporation has been organized in good faith.

“2. Rejecting the construction placed by the Government upon the commodities clause, it is decided that that clause, when all its provisions are harmoniously construed, has solely for its object to prevent carriers engaged in interstate commerce from being associated in interest at the time of transportation with the commodities transported, and therefore the commodities clause only prohibits railroad companies engaged in interstate commerce from transporting in such commerce commodities under the following circumstances and conditions:

“(a) When the commodity has been manufactured, mined, or produced by a railroad company or under its authority, and at the time of transportation the railroad company has not, in good faith, before the act of transportation, parted with its interest in such commodity.

“(b) When the railroad company owns the commodity to be transported in whole or in part.

“(c) When the railroad company, at the time of transportation, has an interest, direct or indirect, in a legal sense in the commodity, which last prohibition does not apply to commodities manufactured, mined, produced, owned, etc., by a corporation because a railroad company is a stockholder in such corporation. Such ownership of stock in a producing company by a railroad company does not cause it, as the owner of the stock, to have a legal interest in the commodity manufactured, etc., by the producing corporation.”³

³ For press comments on the Supreme Court decision, see summary in “The Literary Digest” May 15, 1909, issue.

CHAPTER XLII.

HOURS-OF-SERVICE LAW.

SECTION

- 717. Context of the Hours-of-Service Law.
- 718. Purpose of the Law.
- 719. Passage of the Act.
- 720. Scope of the Law.
- 721. Sixteen Hours the Maximum Continuous Service of Trainmen.
- 722. Ten Consecutive Hours off Duty after having been Sixteen Consecutive Hours on Duty.
- 723. Eight Consecutive Hours off Duty after having been on Duty Sixteen Hours in the Aggregate.
- 724. Service Hours of Telegraph and Telephone Operators.
- 725. Twenty-Four-Hour Service Period defined.
- 726. Term "Employee" defined.
- 727. Employés of Carriers to whom Provisions of Law are not Applicable.
- 728. Employés delayed in the Service caused by Casualty or Unavoidable Accident or Act of God.
- 729. Employés who are "Deadheading" are not within the Meaning of the Law.
- 730. Electric Lines which are Interstate Carriers.
- 731. Ferry Employés.
- 732. Crews of Wrecking or Relief Trains.
- 733. Jurisdiction of Interstate Commerce Commission over the Enforcement of the Law.
- 734. Administrative Relief from the Requirements of the Law.
- 735. Penalty for Violation of the Law by Carriers.
- 736. Reports of Carriers to the Commission.

§ 717. Context of the Hours-of-Service Law.

For provisions of the Hours-of-Service Law,¹ see *Appendix*, 23.

§ 718. Purpose of the Law.

The incidents immediately preceding the passage of the Hours-of-Service Law and the circumstances connected with

¹ 34 Statutes at Large 1415, approved March 4, 1907.

and surrounding its adoption leave little doubt as to the purpose of Congress to minimize the dangers incident to railroad travel, by preventing men from being overworked. Of course the period for which railroad employés may, without hardship, perform their duties varies with their physical condition, but the hours of service prescribed by the Act are such as the legislature has, from experience and observation, learned that men of their calling and in their ordinary state of health may consistently observe.

The object of the Act, therefore, is to limit the periods of time in which railroad employés may be required or permitted to remain on duty.²

§ 719. Passage of the Act.

The Hours-of-Service Law³ was approved March 4, 1907, at 11:50 A. M., and was made to take effect and be in force one year after its passage.

§ 720. Scope of the Law.

The law is applicable to every common carrier subject to the Act to Regulate Commerce and to every employé concerned in the physical operation of such company's trains.⁴

§ 721. Sixteen Hours the Maximum Continuous Service of Trainmen.

The Act provides that it shall be unlawful for any common carrier, its officers or agents, subject to the Act to require or permit any employé to be or remain on duty for a longer period than sixteen consecutive hours.⁵

§ 722. Ten Consecutive Hours off Duty after having been Sixteen Consecutive Hours on Duty.

The Act provides that whenever any employé of any common carrier subject to its provisions, shall have been on duty for sixteen hours he shall be relieved and not required or per-

² Twenty-Second Annual Report of I. C. C. (1908).

³ See note 1, *supra*.

⁴ See note 2, *supra*.

⁵ Section 2 of Law.

mitted again to go on duty until he has had at least ten consecutive hours off duty.⁶

The requirement for ten consecutive hours off duty applies only to such employes as have been on duty for sixteen consecutive hours.⁷

§ 723. Eight Consecutive Hours off Duty after having been on Duty Sixteen Hours in the Aggregate.

The Act provides that no such employé who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.⁸

The requirement for eight consecutive hours off duty applies only to employes who have not been on duty sixteen consecutive hours but have been on duty sixteen hours in the aggregate out of a twenty-four-hour period.⁹

§ 724. Service Hours of Telegraph and Telephone Operators.

The Act contains a proviso that no operator, train dispatcher or other employé who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week.¹⁰

A "week" means a calendar week, beginning with Sunday.¹¹

⁶ Section 2 of Law.

⁷ See note 2, *supra*.

⁸ Act. Section 3.

⁹ See note 2, *supra*.

¹⁰ See note 8, *supra*.

¹¹ See note 2, *supra*.

A telegraph or telephone operator who is employed in a night and day office may not be required to perform duty in any capacity or of any kind beyond nine hours of total service in any twenty-four-hour period.¹²

§ 725. Twenty-Four-Hour Service Period defined.

A twenty-four-hour period begins when the employé goes on duty after an interim of not less than eight consecutive hours off duty.¹³

Time "on duty" includes the entire period of service or responsibility therefor,¹⁴ and does not mean a continuous cycle of time without intermission.^{14a}

§ 726. Term "Employee" defined.

The Act defines the term "employee" to mean persons actually engaged in or connected with the movement of trains.¹⁵ This includes train dispatchers.^{15a}

§ 727. Employés of Carriers to whom Provisions of Law are not Applicable.

The specific proviso of the law in regard to hours of service is:

"That no operator, train dispatcher, or other employee who, by the use of the telegraph or telephone, dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements, shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional

¹² See note 2, *supra*.

¹³ *Ibid*.

¹⁴ *Ibid*.

^{14a} *A. T. & S. F. Ry. Co. v. United States* (1910), 177 Fed. Rep. 114.

¹⁵ Hours-of-Service Law. Section 1.

^{15a} *A. T. & S. F. Ry. Co. v. United States* (1910), 177 Fed. Rep. 114.

hours in a twenty-four-hour period on not exceeding three days in any week.”¹⁶

These provisions apply to employés in towers, offices, places, and stations, and do not include train employees, who by the terms of the law are permitted to be or remain on duty sixteen hours consecutively or sixteen hours in the aggregate in any twenty-four-hour period, and who may occasionally use telegraph or telephone instruments for the receipt or transmission of orders affecting the movement of trains.¹⁷

§ 728. Employés delayed in the Service caused by Casualty or Unavoidable Accident or Act of God.

The Act provides that its provisions shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employé at the time said employee left a terminal and which could not have been foreseen.¹⁸

Any employé so delayed may therefore continue on duty to the terminal or end of that run. The proviso quoted removes the application of the law to that trip.¹⁹

The above exemptions prescribed by the law contemplate only such accidents as could not by the exercise of diligence on the part of the carriers, their agents or officers, have been anticipated and prevented.²⁰

§ 729. Employés who are “Deadheading” are not within the Meaning of the Law.

Employés “deadheading” on passenger trains or on freight trains and not required to perform, and not held responsible for the performance of, any service or duty in connection with the movement of the train upon which they are “deadhead-

¹⁶ See note 5, *supra*.

¹⁷ Rule 88, Con. Rul. Bul. No. 4 (June 25, 1908).

¹⁸ See note 8, *supra*.

¹⁹ See note 17, *supra*.

²⁰ Rule 108, Con. Rul. Bul. No. 4 (November 10, 1908).

ing," are not, while so "deadheading," "on duty" as that phrase is used in the Act regulating the hours of labor.²¹

§ 730. Electric Lines which are Interstate Carriers.

Upon inquiry whether the Hours-of-Service Law applies to electric street car lines which are interstate carriers: *Held*, That it applies to all railroads subject to the provisions of the Act to Regulate Commerce, as amended, including street railroads when engaged in interstate commerce.²²

§ 731. Ferry Employés.

The Hours-of-Service Law does not apply to employés on a ferry, even though the ferry be owned by a railroad company. The law applies to employees connected with the movement of trains, and hence does not embrace employés engaged only in the operation of a ferry. This ruling does not apply to car ferries.²³

§ 732. Crews of Wrecking or Relief Trains.

The provisions of the Hours-of-Service Law do not apply to the crews of wrecking or relief trains.²⁴

§ 733. Jurisdiction of Interstate Commerce Commission over the Enforcement of the Law.

It is the duty of the Interstate Commerce Commission to execute and enforce the provisions of the Hours-of-Service Act.²⁵

The fourth section of the Act provides that:

" * * * All powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this Act."

It is understood, and so maintained by the Commission, that Congress, in using this expression intended to confer for the

²¹ Rule 74, Con. Rul. Bul. No. 4 (May 5, 1908).

²² Rule 56, Con. Rul. Bul. No. 4 (April 7, 1908).

²³ See note 20, *supra*.

²⁴ See note 5, *supra*.

²⁵ Hours-of-Service Law. Section 4.

enforcement of the Hours-of-Service Law each and every power previously granted to the Commission.²⁶

§ 734. Administrative Relief from the Requirements of the Law.

The Georgia Southern & Florida Railway Company on January 15, 1908, filed its petition with the Interstate Commerce Commission for relief from the requirements of the law under the proviso clause of Section 2 of the Act.²⁷

The petition asked that operators and agents at three of its stations after handling train orders for nine hours or less, may then be required to work a sufficient numbers of hours as clerks or otherwise to complete twelve hours in each twenty-four hours; that agents at six stations who handle very few train orders or messages may be required to remain on duty from thirteen to fifteen hours, and that an agent and operator may be allowed to divide the time during which the office at one station is kept open. The general showing as to each of these nine stations, and the only grounds upon which as to them an extension of time was asked, was the ease with which the entire service of the company was performed by two men at each station and the needless expense of increasing the number. There was no allegation that the company had insufficient funds to pay an increased force of men as may have been necessary to keep those offices open the same as at the time of the petition and comply with the limitation upon the hours of labor imposed by the Act in question.

Knapp, chairman, in delivering the opinion of the Commission denying the petition for relief, said:

"It is entirely clear to us that this petition under the most liberal interpretation of the facts set forth, presents no case for administrative relief, temporary or otherwise, from the requirements of this law.

"The only authority conferred upon the Commission in this regard is expressed as follows:

²⁶ See note 2, *supra*.

²⁷ In re G. S. & F. Ry. Co. (1908), 13 I. C. R. 134.

"The Interstate Commerce Commission may after full hearing in a particular case and for good cause shown, extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

"The proviso referred to is that part of Section 2 which provides that no employee who handles train orders by telegraph or telephone shall be required or permitted to be on duty more than nine hours out of the twenty-four at offices continually operated night and day, nor more than thirteen hours out of the twenty-four at offices operated 'only during the daytime,' except in case of emergency, when four additional hours may be required on not more than three days in any week. *No other provision of the law can be extended or modified by the Commission.*

"The power to extend under the proviso is extremely limited. This is evident from the plain import of the language above quoted, from the context to which it relates and from the obvious purpose of the entire enactment. It seems clear to us that nothing more was intended than to authorize the Commission, in exceptional instances where conditions are unusual or unforeseen, to enlarge somewhat the time allowed to prepare for compliance. Conditions which are common to many railroads or to a substantial percentage of telegraph stations are conditions which must have been taken into account when this law was passed and do not constitute 'a particular case' for relief by the Commission.

"We are, therefore, of the opinion that the petition filed by this company does not show 'good cause' for extending the period within which it shall comply with the law at the several stations named, because it sets forth no exceptional or peculiar conditions which render observance impracticable at any of these stations, but merely alleges a state of facts tending to show that the law *ought not to be there enforced* on account of the small number of train orders and messages handled and the absence of any need or occasion for increasing the force of telegraphers. This is purely a question of legislative policy which was and must have been determined by the Congress adversely to the company and the Commission has no right or authority to postpone the taking effect of the Act merely because compliance with its provisions will involve inconvenience and financial hardship. The situation at the stations in question, as described in the petition, is in no sense unusual or of recent origin. It is a situation with which the Congress was well acquainted when the law was enacted for it is practically identical with the situation which has long existed for years at hundreds if not thousands of stations and has long been a matter of common knowledge.

The Act was passed with full understanding that conditions substantially the same as these here considered were so numerous in nearly every part of the country as to be characteristic of railway practice, and the law was evidently intended to apply at stations of this familiar type. To extend the time allowed for compliance at this class of stations, for extension in this case logically involves like extensions in all similar cases, would practically nullify the law during the period of postponement as to a large percentage of the employees for whose benefit the law was enacted, and presumably deprive the traveling public meanwhile of the added safeguard against accident which the law was designed to secure. The purpose of this enactment and the intention to give it application to all employees who handle train orders, whether much or little of their time is occupied with that duty, are so clear and explicit as not to be open to question. It is equally clear that the authority of the Commission to grant an extension was intentionally limited to instances of special and unforeseen conditions. It was plainly not contemplated that conditions which are common and well known, which are so frequently found on every railway as to comprise a recognized class, should be regarded as a sufficient basis for administrative relief."

§ 735. Penalty for Violation of the Law by Carriers.

See *Section 778, post*.

§ 736. Reports of Carriers to the Commission.

The Commission has held that inasmuch as the Act to Regulate Commerce empowers the Commission, in the administration of that law, to require reports under oath, a similar authority may lawfully be exercised by the Commission in the execution of the Hours-of-Service Law.²⁸

²⁸ See note 2, *supra*.

CHAPTER XLIII.

EMPLOYERS' LIABILITY ACT.

SECTION

737. An Act relating to Liability of Common Carriers in the District of Columbia and Territories and Common Carriers engaged in Commerce between the States and between the States and Foreign Nations to their Employees—Passed June 11, 1906.
738. Employers' Liability Act of June 11, 1906, declared Unconstitutional.
739. An Act relating to the Liability of Common Carriers by Railroad to their Employees in certain Cases.—Passed April 22, 1908.
740. Recovery for Loss to Family.
741. Liability for Injuries within the Territories.

This chapter on the Employers' Liability Act has been incorporated in this work, not because the Interstate Commerce Commission has any jurisdiction in the premises, but because of its kindred relation to the subject under discussion and of the principles involved.

§ 737. An Act relating to Liability of Common Carriers in the District of Columbia and Territories and Common Carriers engaged in Commerce between the States and between the States and Foreign Nations to their Employees¹—Passed June 11, 1906.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That every common carrier engaged in trade or commerce in the District of Columbia, or in any Territory of the United States, or between the several States, or between any Territory and another, or between any Territory or Territories and any State or States, or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or Foreign nations, shall be liable to any of its employees, or, in case of his death, to his personal representative for the benefit of his widow and children, if any, if none, then for his parents, if none, then for his next of kin dependent upon him, for all damages

¹ Act of Congress of June 11, 1906 [34 Statutes at Large, 232, C, 3073].

which may result from the negligence of any of its officers, agents, or employees, or by reason of any defect or insufficiency due to its negligence in its cars, engines, appliances, machinery, track, roadbed, ways, or works.

Section 2. That in all actions hereafter brought against any common carrier to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery where his contributory negligence was slight and that of the employer was gross in comparison, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee. All questions of negligence and contributory negligence shall be for the jury.

Section 3. That no contract of employment, insurance, relief benefit or indemnity for injury or death entered into by or on behalf of any employee, nor the acceptance of any such insurance, relief benefit, or indemnity by the person entitled thereto, shall constitute any bar or defense to any action brought to recover damages for personal injuries to or death of such employee: *Provided, however,* That upon the trial of such action against any common carrier the defendant may set off therein any sum it has contributed toward any such insurance, relief benefit, or indemnity that may have been paid to the injured employee, or, in case of his death, to his personal representative.

Section 4. That no action shall be maintained under this Act, unless commenced within one year from the time the cause of action accrued.

Section 5. That nothing in this Act shall be held to limit the duty of common carriers by railroads or impair the rights of their employees under the safety-appliance Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three.

§ 738. Employers' Liability Act of June 11, 1906, declared Unconstitutional.

In deciding the Employers' Liability Cases,² the United States Supreme Court, per Mr. Justice White, said:

"It remains only to consider the contention that the Act is constitutional, although it embraces subjects not within the power of Congress to regulate commerce, because one who engages in interstate commerce thereby submits all his business concerns to the regulating control of Congress. To state the proposition is to refute it. It assumes that because one engages in interstate commerce he thereby endows Congress with power not delegated to it by the Constitution, in other words, with the right to legislate concerning matters of purely

² Howard, *Admx. v. Ill. Cent. Rd. Co. et al.* (1908), 207 U. S. 463; 52 L. ed. 297, 28 Sup. Ct. 141; see *El Paso & N. R. Co. v. Gutierrez* (1909), 215 U. S. 87, 54 L. ed. —, 30 Sup. Ct. 21.

State concern. It rests upon the conception that the Constitution destroyed that freedom of commerce which it was its purpose to preserve, since it treats the right to engage in interstate commerce as a privilege which cannot be availed of except upon such conditions as Congress may prescribe, even although the conditions would be otherwise beyond the power of Congress. It is apparent that if the contention were well founded it would extend the power of Congress to every conceivable subject, however inherently local, would obliterate all the limitations of power imposed by the Constitution and would destroy the authority of the States as to all conceivable matters which from the beginning have been and must continue to be under their control so long as the Constitution endures. * * *

"Concluding as we do, that the statute, whilst it embraces subjects within the authority of Congress to regulate commerce, also includes subjects not within its constitutional power, and that the two are so interblended in the statute that they are incapable of separation, we are of the opinion that the Courts below rightly held the statute to be repugnant to the Constitution and nonenforceable; and the judgments below are, therefore, affirmed."

Mr. Justice Peckham, concurring, stated: "I concur in the proposition that as to traffic or other matters, within the State, the Act is unconstitutional, and it cannot be separated from that part which is claimed to be valid as relating to interstate commerce."

Chief Justice Fuller and Mr. Justice Brewer agreed in the concurring opinion.

**§ 739. An Act relating to the Liability of Common Carriers by Railroad to their Employees in certain Cases³—
Passed April 22, 1908.**

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That every common carrier by railroad, while engaging in commerce between any of the

³ Act of Congress of April 22, 1908 [35 Statutes at Large, 65, C. 149]. This Act was declared constitutional in *Walsh v. N. Y. N. H. & H. R. Co.* (1909), 173 Fed. Rep. 494.

several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such common carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Section 2. That every common carrier by railroad in the Territories, the District of Columbia, the Panama Canal Zone, or other possessions of the United States shall be liable in damages to any person suffering injury while he is employed by such carrier in any of said jurisdictions, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then to such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves, or other equipment.

Section 3. That in all actions hereafter brought against such common carrier by railroad, under or by virtue of any of the provisions of this Act to recover damages for personal injuries to any employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to the amount of negligence attributable to such employee: *Provided*, that no such employee that may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee.

Section 4. That in any action brought against any common carrier under or by virtue of any of the provisions of this Act to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier or any statute enacted for the safety of employees contributed to the injury or death of such employee.

Section 5. That any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability created by this Act, shall to that extent be void: *Provided*, That in any action brought against any such common carrier under or by virtue of any of the provisions of this Act, such common carrier may set off therein any sum it has contributed or paid to any insurance, relief benefit, or indemnity that may have been paid to the injured employee or the person entitled on account of the injury or death for which said action is brought.

Section 6. That no action shall be maintained under this Act unless commenced within two years from the day the cause of action accrued.

Section 7. That the term "common carrier," as used in this Act, shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.

Section 8. That nothing in this Act shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other act or acts of Congress, or to affect the prosecution of any pending proceeding or right of action under the Act of Congress entitled "An Act Relating to Liability of Common Carriers in the District of Columbia and Territories, and to Common Carriers Engaged in Commerce Between the States and Between the States and Foreign Nations to Their Employees," approved June eleventh, nineteen hundred and six.

§ 740. Recovery for Loss to Family.

In an action for the death of a railroad brakeman under the Employers' Liability Act providing that the recovery shall inure to the benefit of the deceased's family, an instruction permitting a recovery for the loss sustained by decedent's children consisting of their loss of care, attention, instruction and training, from their father's death, was not erroneous.⁴

§ 741. Liability for Injuries within the Territories.

That part of the Employers' Liability Act which makes common carriers by railroad within the territories of the United States liable for injuries to employees as therein stated, supersedes the common law in the territories with respect to such liability, and any cause of action within its terms is necessarily one arising under the laws of the United States, and on that ground within the jurisdiction of a Federal Court, where the requisite amount is involved.⁵

⁴ Duke v. St. Louis & S. F. R. Co. (1909), 172 Fed. Rep. 684.

⁵ Cound v. A. T. & S. F. Ry. Co. (1909), 173 Fed. Rep. 527.

CHAPTER XLIV.

SHERMAN ANTI-TRUST LAW.

SECTION

742. The Commission is without Authority to administer the "Sherman Anti-trust Law."
743. Suits to Enforce the "Anti-trust Act" only cognizable by the Courts.
744. "Sherman Anti-trust Law" cannot be resorted to, to sustain a Proceeding to Enjoin Rebating.
745. Traffic Associations.

§ 742. The Commission is without Authority to administer the "Sherman Anti-trust Law."

The Commission has no authority to administer the "Anti-trust Law," or even to determine whether it has been violated. If an investigation discloses a violation of that law, the power of the Commission is not enlarged nor its duty changed in respect to the rate involved in the inquiry.¹ The violation of the so-called anti-trust act by unwarranted agreements in restraint of trade by carriers of interstate commerce is not within the jurisdiction of the Commission but only the correction of unreasonable rates which may be the purpose and effect of such illegal act.²

§ 743. Suits to Enforce the "Anti-trust Act" only cognizable by the Courts.

Any action for the violation of the "Anti-trust Act" or a proceeding for the enforcement thereof is only cognizable by the Federal Courts.³

¹ Sprigg et al. v. B. & O. Rd. Co. et al. (1900), 8 I. C. C. R. 443.

² Warren Mfg. Co. et al. v. Southern Rwy Co. et al., 12 I. C. C. R. 381.

³ Central Yellow Pine Association v. Illinois Central Rd. Co. et al. (1905), 10 I. C. C. R. 505. Tift et al. v. Southern R. Co. et al., 10 I. C. C. R. 548 (1905).

§ 744. "Sherman Anti-trust Law" cannot be resorted to, to sustain a Proceeding to Enjoin Rebating.

The Interstate Commerce Act and the Act known as the "Sherman Anti-trust Law"⁴ are separate and independent Acts, not germane in character and purpose; and therefore jurisdiction in the Circuit Court of the United States over a bill in equity to enjoin a railroad company from granting rebates to favored shippers cannot be maintained upon the ground that such act of the railroad company is a monopoly within the meaning of the second section of said Anti-trust Act."⁵

§ 745. Traffic Associations.⁶

¶ A. AGREEMENTS FOR MAINTENANCE OF RATES.

A contract between competing railroads relating to traffic rates for the transportation of articles of commerce between the States, the direct effect of which is to produce a restraint of the Act of Congress of July 2, 1890,⁷ declaring that every contract, combination, in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States or with foreign nations, is illegal.⁸

Competing and nonconnecting railroads are not authorized by the Act to Regulate Commerce to make an agreement of maintenance of rates and the curbing of competition.⁸

All combinations in restraint of trade or commerce are prohibited by the Anti-trust Act, which Act was intended to cover common carriers by railroad.⁸

The right of a railroad company to charge reasonable rates

⁴ Act, July 2, 1890, C. 647, 26 Stat. 209, Chap. 647 (U. S. Comp. St. 1901, p. 3200).

⁵ U. S. v. A. T. & S. F. Ry. Co. (1905), 142 Fed. Rep. 176.

⁶ See important recommendations and comments of Interstate Commerce Commission to Congress in its Twelfth Annual Report, 1898.

⁷ See note 4, *supra*.

⁸ United States v. Trans-Missouri Freight Association (1896), 166 U. S. 290, 17 Sup. Ct. Rep. 540, 41 L. ed. 1007, reversing 58 Fed. Rep. 58, 7 C. C. A. 15, and 53 Fed. Rep. 440.

does not include the right to enter into a combination with competing roads to maintain reasonable rates.

An agreement between railroad companies "for the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic, both through and local" is by its necessary effect an agreement to restrain trade or commerce within the meaning of the Anti-trust Act, no matter what the intent was on the part of those who signed it.

The Court said:

What one company may do in the way of charging reasonable rates is radically different from entering into an agreement with other and competing roads to keep up the rates to that point. If there be any competition the extent of the charge for the service will be seriously affected by that fact. Competition will itself bring charges down to what may be reasonable, while in the case of an agreement to keep up prices competition is allowed no play; it is shut out, and the rate is practically fixed by the companies themselves by virtue of the agreement, so long as they abide by it.⁹

¶ B. AGREEMENTS TO PREVENT COMPETITION.

An agreement between railroad companies which directly and effectually prevents competition is, under the statute,¹⁰ in restraint of trade, notwithstanding the possibility that a restraint of trade might also follow unrestricted competition; which might destroy weaker roads and give the survivor power to raise rates.¹¹

The Court said that ordinary freedom of contract in the use and management of their property did not require

the right to combine as one consolidated and powerful association for the purpose of stifling competition among themselves, and of thus keeping their rates and charges higher than they might otherwise be under the laws of competition. And this is so, even though the rates provided for in the agreement may for the time be not more than are reasonable. They may easily and at any time be increased. It is the combination of these large and powerful corporations, covering vast sections of territory and influencing trade throughout the whole extent thereof, and acting as one body in all matters over which the combination extends, that constitutes the alleged evil, and in regard to which, so far as the combination operates upon and restrains interstate commerce, Congress has power to legislate and to prohibit.¹¹

⁹ U. S. v. Trans-Missouri Freight Ass'n, 166 U. S. 290, 17 Sup. Ct. 540, 41 L. ed. 1007.

¹⁰ See note 4, *supra*.

¹¹ United States v. Joint-Traffic Association (1898), 171 U. S. 505, 19 Sup. Ct. Rep. 25, 43 L. ed. 259, reversing 76 Fed. Rep. 895.

CHAPTER XLV.

GOVERNMENT-AIDED RAILROAD AND TELEGRAPH COMPANIES.

SECTION

- 746. Equal Facilities required—Discrimination forbidden.
- 747. Complaints to Interstate Commerce Commission.
- 748. Duty of Commission when Complaint is made.
- 749. How Order of Commission is enforced.
- 750. Commission may institute Inquiries on its Own Motion.
- 751. Penalties for Failure to Comply with Orders of Commission.
- 752. Action for Damages may be brought.
- 753. Railroad and Telegraph Lines subject to Act were Required to File Copies of their Contract.
- 754. Reports of Government-Aided Railroad and Telegraph Lines to the Commission.
- 755. Duty of Commission to inform Attorney-General of Violations of Act.

By the Act of Congress approved August seventh, eighteen hundred and eighty-eight, entitled "An Act supplementary to the Act of July first, eighteen hundred and sixty-two, entitled, 'An Act to aid in the construction of a railroad and telegraph lines from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes,' and also of the Act of July second, eighteen hundred and sixty-four, and other Acts amendatory of said first-named Act," certain powers and duties in relation to those lines were devolved upon the Commission as follows.

§ 746. Equal Facilities required—Discrimination forbidden.

The second section of the Government-Aided Railroad Act¹ provides that the railroad and telegraph companies referred to in the first section thereof are required to allow such con-

¹ Public No. 237, approved August 7, 1888.

nection to be made and to so operate their respective telegraph lines as to afford equal facilities to all without discrimination; and to receive, deliver and exchange business with connecting telegraph lines on equal terms, affording equal facilities without discrimination for or against any one of such connecting lines; and such exchange of business to be on terms just and reasonable.

§ 747. Complaints to Interstate Commerce Commission.

The third section provides that if any railroad or telegraph company referred to in the first section, or company operating such railroad or telegraph line, shall refuse or fail, in whole or in part, to maintain and operate a telegraph line as required by law, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then complaint may be made to the Interstate Commerce Commission, whose duty it shall be, under such rules and regulations as the Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, the railroad or telegraph company concerned to abide by and perform such order.

§ 748. Duty of Commission when Complaint is made.

The statute makes it the duty of the Interstate Commerce Commission when such determination and orders are made to notify the parties concerned.²

§ 749. How Order of Commission is enforced.

The order of the Commission may, if necessary, be enforced by writ of mandamus in the Courts of the United States, in the name of the United States, at the relation of either of the Interstate Commerce Commissioners.³

² Section 3, Government-Aided Railroad Act.

³ See note 1, *supra*.

§ 750. Commission may institute Inquiries on its Own Motion.

The statute empowers the Commissioners to institute any inquiry, upon their own motion, in the same manner and with the same effect as though complaint had been made.⁴

§ 751. Penalties for Failure to Comply with Orders of Commission.

The statute provides⁵ that any officer or agent of such Government-aided railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the Interstate Commerce Commission, shall in every case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months.

§ 752. Action for Damages may be brought.

In every such case of refusal or failure as stated above, the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted as stated above, but may bring an action for damages sustained thereby against the company whose officer or agent may be guilty thereof, in the Circuit or District Court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit, processes may be served upon any agent of the company found in such State or Territory, and such service shall be held by the Court good and sufficient.⁶

§ 753. Railroad and Telegraph Lines subject to Act were Required to File Copies of their Contract.

The Government-Aided Railroad Act passed August 7, 1888, compelled each and every of the railroad and telegraph com-

⁴ See note 1, *supra*.

⁵ Section 5, Government-Aided Railroad Act.

⁶ *Ibid*.

panies subject to its provisions to file with the Interstate Commerce Commission within sixty days after the passage of said Act, copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, for property over or upon its right of way.⁷

§ 754. Reports of Government-Aided Railroad and Telegraph Lines to the Commission.

¶ A. DUTY OF CARRIER TO FILE ANNUAL REPORTS.

The statute makes it the duty of each and every one of the Government-aided railroad and telegraph companies to annually report to the Interstate Commerce Commission, with reasonable fulness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year.⁸

¶ B. SPECIAL REPORT.

The Government-Aided Railroad Act which was passed August 7, 1888, ordered carriers subject to its provisions to file with the Interstate Commerce Commission, a report describing with sufficient certainty, the telegraph lines and property belonging to it, and in the manner in which the same were being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporations claimed to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same were being then used and operated.⁹

⁷ Section 6, Government-Aided Railroad Act.

⁸ Ibid.

⁹ Ibid.

¶ C. COMMISSION AUTHORIZED TO PRESCRIBE SYSTEM OF REPORTS
AND TIME OF FILING SAME.

The statute authorizes the Interstate Commerce Commission to prescribe a system of reports and the manner in which they shall be filed, also the time of filing the same.¹⁰

¶ D. PENALTY FOR REFUSAL TO MAKE REPORTS TO THE
COMMISSION.

The statute provides that if any such railroad or telegraph company shall refuse or fail to make such reports or any report as may be called for by the Commission, or refuse to submit its books or records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand dollars nor more than five thousand dollars to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States.¹¹

§ 755. Duty of Commission to inform Attorney-General of
Violations of Act.

The statute makes it the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures provided for above.¹²

¹⁰ Section 6, Government-Aided Railroad Act.

¹¹ Ibid.

¹² Ibid.

CHAPTER XLVI.

PENALTIES AND FORFEITURES FOR VIOLATIONS OF THE LAW.

SECTION

756. Penalty of Carrier for issuing or giving free Transportation in Violation of the Statute.
757. Penalty of Person using Free Transportation in Violation of the Statute.
758. Misdemeanor to offer, grant, give, solicit, accept or receive any Rebate from Published Rates or Other Concession or Discrimination and Penalty therefor.
759. Penalties for Violation of Act by Carriers, or when the Carrier is a Corporation, its Officers, Agents, or Employees.
760. Penalty for False Billing, False Classification, False Weighing, etc., by Carrier or its Agent.
761. Penalty for False Representation by Shipper or its Agent whereby Property is Transported at Less than Regular Tariff Rates.
762. Penalty for Inducing Common Carrier to Discriminate Unjustly.
763. Carrier Corporation as well as Officer or Agent, liable to Conviction for Misdemeanor, and Penalty Therefor.
764. Act of Officer or Agent to be also deemed Act of Carrier.
765. Forfeiture, in addition to other Prescribed Penalty, of Three Times Amount of Money and Value of Consideration Illegally Received shall be paid to the United States.
766. Failure of Carrier to publish Rates or observe Tariffs a Misdemeanor and Penalty therefor.
767. Penalty for Failure of Carrier to comply with Tariff Regulations promulgated by Commission.
768. Penalty for Carrier's Refusal or Omission to quote Rate to Shipper or Misstatement of Same, where Damages result.
769. Punishment by Forfeiture for Failure of Carriers to File Reports.
770. Punishment of Carrier by Forfeiture for Failure to Keep Accounts or Records as Prescribed by the Commission or Allow Inspection of Accounts or Records.
771. Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for Keeping other Accounts than those Prescribed by the Commission.
772. Punishment of Special Examiner who divulges Facts or Information without Authority.

SECTION

773. Penalty of Person neglecting or refusing to attend and Testify before the Commission.
774. Penalty of Carrier or its Agents for unlawfully disclosing any Information concerning Freight transported.
775. Penalty of Person unlawfully soliciting Information concerning Freight of Other Shippers.
776. Failure to obey Order of Commission and Penalty therefor.
777. Penalty for Pooling of Freights and Division of earnings.
778. Penalty of Carrier for Violation of Hours-of-Service Law.
779. Penalty for Violation of Safety-Appliance Act.
780. Penalty for Violation of Ash-Pan Act.
781. Penalties for Violations of the Transportation-of-Explosives Act.

§ 756. Penalty of Carrier for issuing or giving free Transportation in Violation of the Statute.

The Act provides that any common carrier issuing or giving interstate free transportation in violation of the provisions thereof, shall be deemed guilty of a misdemeanor and for each offense on conviction, shall pay to the United States a penalty of not less than one hundred nor more than two thousand dollars.¹

§ 757. Penalty of Person using Free Transportation in Violation of the Statute.

The Act states that any person who unlawfully uses any interstate free ticket, free pass, or free transportation, shall be subject to the same penalty as is the carrier issuing or giving the same, i. e., shall pay to the United States a penalty of not less than one hundred nor more than two thousand dollars.²

Where a common carrier issues an interstate free pass to an employee who delivers the pass to a person not authorized to receive or use it and the said party uses the same on an interstate journey he violates the Act to Regulate Commerce as amended June 29, 1906, and the employee delivering such pass is guilty of aiding and abetting in said violation.³

¹ Act to Regulate Commerce. Section 1.

² Ibid.

³ United States v. Williams, 159 Fed. Rep. 310.

§ 758. Misdemeanor to offer, grant, give, solicit, accept or Receive any Rebate from Published Rates or other Concession or Discrimination and Penalty therefor.

The Elkins Act provides:⁴ "It shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to Regulate Commerce and the Acts amendatory thereof, whereby any such property shall by any device whatever, be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to Regulate Commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer, or director of any corporation subject to the provisions of this Act, or the Act to Regulate Commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years or both such fine and imprisonment, in the discretion of the Court."⁵

§ 759. Penalties for Violation of Act by Carriers, or when the Carrier is a Corporation, its Officers, Agents, or Employés.

The Act to Regulate Commerce provides that any common carrier subject to its provisions, or, whenever such common

⁴ Elkins Act. Section 1.

⁵ Elkins Act, Section 1.

carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter, or thing in the Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in the Act required to be done, or shall cause or willingly suffer, omit, or fail to do any act, matter, or thing, so directed or required by the Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of the Act, for which no penalty is otherwise provided, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the Court.⁹

§ 760. Penalty for False Billing, False Classification, False Weighing, etc., by Carrier or its Agent.

The Act to Regulate Commerce provides that any common carrier subject to its provisions, or whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and wilfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for prop-

⁹ Act to Regulate Commerce, Section 10, as amended June 18, 1910.

erty at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.^{6a}

§ 761. Penalty for False Representation by Shipper or its Agent whereby Property is Transported at Less than Regular Tariff Rates.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of the Act, or for whom, as consignor or consignee, any such carrier shall transport property who shall knowingly and wilfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and wilfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage

^{6a} Act to Regulate Commerce, Section 10, as amended June 18, 1910.

or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.^{6b}

§ 762. Penalty for Inducing Common Carrier to Discriminate Unjustly.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that if any person, or any officer or agent of any corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of the Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and that such person, corporation, or company shall also, together with said common carrier, be

^{6b} Act to Regulate Commerce, Section 10, as amended June 18, 1910.

liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.^{6c}

§ 763. Carrier Corporation, as well as Officer or Agent, liable to Conviction for Misdemeanor, and Penalty Therefor.

The Elkins Act provides:⁷ "That anything done or omitted to be done by a corporation common carrier, subject to the Act to Regulate Commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed."

§ 764. Act of Officer or Agent to be also deemed Act of Carrier.

In construing and enforcing the above provisions of the Elkins Act, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person.⁸

§ 765. Forfeiture, in addition to other Prescribed Penalty, of Three Times Amount of Money and Value of Consideration Illegally Received shall be paid to the United States.

The Elkins Act provides that,⁹ "Any person, corporation, or

^{6c} Act to Regulate Commerce, Section 10, as amended June 18, 1910.

⁷ See note 4, *supra*.

⁸ See note 4, *supra*.

⁹ *Ibid*.

company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer or otherwise directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall, in addition to any penalty provided for by this Act, forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court, * * * and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be."

§ 766. Failure of Carrier to publish Rates or observe Tariffs a Misdemeanor and Penalty Therefor.

The Elkins Act provides that the willful failure upon the part of any carrier subject to the Act to Regulate Commerce and Acts amendatory thereof, to file and publish the tariffs of rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof, the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense.¹⁰

¹⁰ See note 4, *supra*.

§ 767. Penalty for Failure of Carrier to comply with Tariff Regulations promulgated by Commission.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that in case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of Section 6 of the Act, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil suit brought by the United States.^{10a}

§ 768. Penalty for Carrier's Refusal or Omission to quote Rate to Shipper or Misstatement of Same, where Damages result.

Section 6 of the Act to Regulate Commerce (*as amended June 18, 1910*) reads as follows:

"If any common carrier subject to the provisions of this Act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States."

^{10a} Section 6 of Act, as amended June 18, 1910.

§ 769. Punishment by Forfeiture for Failure of Carriers to File Reports.

¶ A. ANNUAL AND MONTHLY REPORTS.

The statute provides, that, if any carrier, person, or corporation subject to its provisions shall fail to make and file its annual reports as prescribed in Section 20 of the Act within the time specified therein or within the time extended for making and filing the same, or shall fail to make specific answer to any question authorized by said section within thirty days from the time it is lawfully required so to do such party shall forfeit to the United States in the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto.¹¹

The above forfeiture also is imposed upon carriers who fail to file monthly reports of earning and expenses or special reports within a specified period, as may be required by the Commission.¹²

¶ B. ACCIDENT REPORTS.

The Accident-Reports Act provides that any common carrier failing to make its report within thirty days after the end of any month shall be deemed guilty of a misdemeanor and, upon conviction thereof, by a Court of competent jurisdiction, shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time specified for making the same.¹³

§ 770. Punishment of Carrier by Forfeiture for Failure to Keep Accounts or Records as Prescribed by the Commission or Allow Inspection of Accounts or Records.

The Act provides that in case of failure or refusal on the part of any carrier receiver, or trustee to keep such accounts, records, and memoranda on the book and in the manner pre-

¹¹ Act to Regulate Commerce. Section 20.

¹² Ibid.

¹³ Accident-Reports Act. Section 2.

scribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in the Act.¹⁴

§ 771. Punishment of Person for False Entry in Accounts or Records, or Mutilation of Accounts or Records, or for Keeping other Accounts than those Prescribed by the Commission.

The Act provides that any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify, the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any Court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term of not less than one year nor more than three years, or both such fine and imprisonment.¹⁵

§ 772. Punishment of Special Examiner who divulges Facts or Information without Authority.

The statute provides that any examiner who divulges any fact or information which may come to his knowledge during the course of any examination, except in so far as he may be directed by the Commission or by a Court of the United States

¹⁴ See note 11, *supra*.

¹⁵ *Ibid*.

of competent jurisdiction, shall be subject to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.¹⁶

§ 773. Penalty of Person neglecting or refusing to attend and Testify before the Commission.

The statute provides that any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a Court of competent jurisdiction shall be punished by fine of not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.¹⁷

§ 774. Penalty of Carrier or its Agents for unlawfully disclosing any Information concerning Freight transported.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) reads as follows:

"It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may

¹⁶ See note 11, *supra*.

¹⁷ Immunity of Witnesses Act.

be so used: *Provided*, That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

“Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.”

§ 775. Penalty of Person unlawfully soliciting Information concerning Freight of Other Shippers.

See *Section 774, supra*.

§ 776. Failure to obey Order of Commission and Penalty therefor.

The Act to Regulate Commerce provides, that, any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of Section 15 of the Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense and in case of a continuing violation, each day shall be deemed a separate offense.¹⁸

The statute provides that the above forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal

¹⁸ Act to Regulate Commerce. Section 16.

operating office, or in any district through which the road of the carrier runs.¹⁹

§ 777. Penalty for Pooling of Freights and Division of Earnings.

Carriers entering into a pooling agreement are subject to the general forfeitures provided for in the statute, except that each day of the continuance of such agreement shall be deemed a separate offense.²⁰

§ 778. Penalty of Carrier for Violation of Hours-of-Service Law.

The Hours-of-Service Act provides that any common carrier subject to the provisions thereof, or any officer or agent thereof, requiring or permitting any employee to go, be, or remain on duty in violation of the second section thereof, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation.²¹

§ 779. Penalty for Violation of Safety-Appliance Act.

The Safety-Appliance Act provides that any common carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line, any car in violation of any of the provisions of such Act, shall be liable to a penalty of one hundred dollars for each and every such violation.²²

§ 780. Penalty for Violation of Ash-Pan Act.

The statute provides that any common carrier using any locomotive in interstate or foreign commerce, not equipped with an ash pan as provided therein shall be liable to a penalty of two hundred dollars for each and every such violation.²³

¹⁹ Act to Regulate Commerce. Section 16.

²⁰ Act to Regulate Commerce. Section 5.

²¹ Hours-of-Service Act. Section 3.

²² Safety-Appliance Acts. Section 6.

²³ Ash-Pan Act. Section 3 (approved May 30, 1908, Public No. 165).

§ 781. Penalties for Violations of the Transportation-of-Explosives Act.

The statute provides that whoever shall knowingly violate, or cause to be violated any of the provisions of the Transportation-of-Explosives Act, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both.²⁴

The law further provides that when the death or bodily injury of any person is caused by the explosion of any article named in the Act, while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from any such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years.²⁵

²⁴ Transportation of Explosives Act. Section 235.

²⁵ Transportation of Explosives Act. Section 236.

CHAPTER XLVII.

PROCEDURE AND PRACTICE BEFORE THE INTERSTATE
COMMERCE COMMISSION.

SECTION

782. Nature of Complaints before the Commission { Formal.
Informal.
783. Sessions of the Commission { General.
Special.
784. Commission may prescribe Form of Procedure.
785. Seal of the Commission.
786. Commissioners may administer Oaths and Affirmations.
787. Commissioners may sign Subpoenas.
788. Number of Commissioners constituting a Quorum.
789. Persons Claiming to be Damaged may elect whether to Complain to the Commission or Bring Suit in a United States Court.
790. Complaints to the Commission.
791. Power of Commission to restrain Enforcement of New Rate, Fare, Charge, or Classification, or Regulation or Practice affecting Same pending Investigation.
792. Preference to be given to Hearings involving Reasonableness of Rates.
793. Appearance of Parties.
794. Persons interested in Matters involved in Cases before Commission may be made Parties.
795. Attendance and Testimony of Witnesses and Production of Documentary Evidence.
796. Rehearing.
797. Orders of Commission.
798. Limitation of Actions before the Commission.
799. Docket of the Commission.
800. Commission may upon its Own Initiative enter upon Hearing concerning Propriety of New Rate, Fare, Charge, Classification, or Regulation.
801. Power of Commission to inquire into Business of Carriers and keep itself Informed in Regard thereto.
802. Commission required to execute and enforce the Provisions of the Act to Regulate Commerce.
803. Institution of Inquiries by the Commission of its own Motion.
804. Commission as a Board of Arbitration.

SECTION

805. Effect of Amendment of June 18, 1910, upon Powers of Commission over pending Cases.

806. Rules of Practice before the Commission in Cases and Proceedings under the Act to Regulate Commerce.

It is not the purpose of the author to touch upon procedure before the Interstate Commerce Commission further than to give the specific provisions of the law relating thereto, which, together with the rules of practice before the Commission as promulgated by that body, will convey a general idea of the subject. Any detailed discussion of that subject would be beyond the scope and purpose of this work.

§ 782. Nature of Complaints before the Commission { Formal.
Informal.

¶ A. DIVISION OF COMPLAINTS.

The work of the Commission which pertains directly to regulation involves two distinct kinds of procedure: One based upon formal petitions filed with the Commission under Section 13 of the law, and involving regular hearing and investigation, the preparation of a report setting forth the material facts found and conclusions reached by the Commission, and issuance of an order dismissing the case or directing the carrier or carriers complained against, to correct the rate or practice which may be held unlawful. The other kind of procedure arises in the performance by the Commission of its duty, under the twelfth section, to "execute and enforce the provisions of the Act," and relates to complaints presented by letter, the examination of tariffs on file in the office in connection with such complaints, and correspondence with shippers and carriers concerning the same. Complaints of the latter class are called informal complaints to distinguish them from the formal petitions or complaints which constitute the basis of contested cases.

¶ B. FORMAL COMPLAINTS.

Formal proceedings before the Commission are usually in-

stituted after the shipper and carrier have failed to reach a settlement or upon facts developed in a preliminary inquiry by the Commission. The result is that these formal cases are generally stoutly contested, and in some of the more important several hearings, producing voluminous records of testimony and argument, are often required.¹

It is probably near the truth to say that the cases before the Commission directly or indirectly affect almost every locality, and therefore nearly all of the people of the United States. Some of these proceedings involve very large interests, others present issues of comparatively trifling importance to the general public, while a few are based upon matters relating to individual claims. The questions presented in such cases relate to the unreasonableness of rates, discriminations in rates between persons, or as between commodities, discrimination between shippers in furnishing cars, undue preference of various descriptions of one person or locality over another person or locality, overcharges, unjust demurrage charges, pooling, and disregard of the law in the publication of tariffs. These general characterizations embrace a great variety of cases arising under differing conditions, each presenting new phases of the transportation problem growing out of facts peculiar to the situation of the complaining shipper or locality, and circumstances surrounding the traffic.

Cases which in themselves present demands for slight relief often bring up important as well as novel questions of law and procedure, and the reported decisions in these cases are capable of citation as precedents in future proceedings.

The complaints very frequently contain demands for damages, and decisions rendered in favor of complainants in such cases often include an award of reparation. In this connection it should be noted that Section 9 of the Act to Regulate Commerce requires the complaining shipper to elect whether he will bring his case for damages in consequence of an alleged violation of the statute in the Federal Courts or before the Commission. It follows that when he elects to pur-

¹ Fifteenth Annual Report of I. C. C. (1901).

sue his remedy in a proceeding before the Commission, alleging violation of the law and claiming damages, he cannot thereafter bring suit for damages in a Court upon the same cause of action.

In cases where wrongful discrimination or preference is claimed to exist, through an unjust relation of rates, complaints usually also allege the higher rate complained of to be unreasonable, and it often happens that the rates may appear unjustly related because the higher charge is unreasonable, indicating the proper method of securing a readjustment of the related rates to be an order forbidding the higher charge.²

¶ C. INFORMAL COMPLAINTS.

The formal hearings and investigations constitute only a portion, and by no means the greater portion, of the administrative work of the Commission. Informal hearings, conferences, correspondence with shippers and with carriers relating to numerous transportation questions constantly arising and the adjustment of such questions without formal complaint necessarily require considerable time and careful attention. More differences between shippers and carriers, many of which arise from mistakes or misunderstanding, are disposed of or satisfactorily arranged through the intervention of the Commission than by formal complaint.³

The main object of this method of procedure is the speedy disposition, through settlements, readjustments plainly required by the statute, or advice given by the Commission, of matters in which regulation is demanded, and thus to limit the number of contested cases upon the docket. It would be an injustice to complaining shippers and communities, amounting frequently to denial of relief, to compel the institution of a regular proceeding every time cause of complaint is brought to the attention of the Commission; and the number of cases requiring the hearing of witnesses, oral or written argument, and formulated decision would probably be

² Eighteenth Annual Report of I. C. C. (1904).

³ Third Annual Report of I. C. C. (1889).

greater than the Commission could dispose of properly or without intolerable delays. The great mass of complaints are handled and disposed of by the Commission by preliminary investigation and correspondence or conference with carriers and shippers.⁴

The increased power vested in the Commission by the amendments to the Act of 1906, has naturally led to a multiplication of the number of complaints presented by letter, and these complaints relate to every conceivable subject connected with the rates, methods, practices, and service of interstate carriers.

A fair conception of the work performed by the Commission in the field of regulation is not possible without reference to the results attained in respect to these cases in which formal complaint is not filed, nor proceedings of a formal nature pursued by the complainant. The public is not advised to the full extent of the work accomplished in securing, through correspondence, the voluntary adjustment by carriers of questions in dispute relating to interstate transportation, nor is the public cognizant of the extreme importance and value of the results obtained. Through the medium of correspondence, is secured the settlement of many matters extremely vexatious to shippers. The questions thus amicably adjusted are not, however, alone questions affecting the interest of individuals; on the contrary, the effect of the action taken by carriers in the adjustment of these complaints is often of wide spread interest and advantage to large communities, if not indeed of vital importance to considerable sections of country. Controversies arising out of the relations between the carriers themselves are likewise in many instances, presented to the Commission for arbitration. The Commission is also called upon frequently by traffic officials of carriers to indicate what is considered to be the proper and lawful course to be pursued in respect to the application of rates or regulations affecting transportation. Thus it will be seen that many great benefits result from the adjustment or settlement through

⁴ See note 1, *supra*.

correspondence of questions informally submitted for investigation.⁵

An important service is thus performed by the Commission to shippers throughout the country in the settlement of meritorious claims, involving comparatively small sums, where the claimants would not feel justified in devoting the time and incurring the expense incident to a formal hearing.⁶

The Commission in its last report to Congress stated:⁷ "This docket has grown from No. 1, on January 1, 1907 (the date on which the Commission's first reparation order was issued), to No. 8755, on December 1, 1909.

"It might be well to state that while cases coming forward on this docket are adjusted in an informal manner, this special docket is not an informal docket except in respect to the form of pleadings and the character of the hearing. The Commission cannot on the special docket exceed the authority exercised by it on the formal docket, nor may it omit any requirement with respect to cases on the special docket that the law imposes on it in the disposition of cases on the formal docket. In all cases, whether on the formal or the informal docket, the law requires a complaint and answer and a full hearing, and provides that where damages are awarded the report of the Commission shall include the findings of fact on which the award is made. The Commission has endeavored to simplify the procedure on the special docket by accepting the application of the carrier as the equivalent of a complaint and answer, and by accepting as a sufficient compliance with the requirements of Section 15 for a full hearing its admission that the rate charged under the circumstances then existing was unreasonable.

"It will therefore be observed that the Commission's action in special reparation cases springs from the same authority which it exercises in formal cases."

⁵ Annual Reports of I. C. C. (21st, 1907; 22d, 1908).

⁶ Twenty-Second Annual Report of I. C. C. (1908).

⁷ Twenty-Third Annual Report of I. C. C. (1909).

§ 783. Sessions of the Commission {General.
Special.

¶ A. GENERAL SESSIONS.

The general sessions of the Commission for the hearing of complaints and for investigations of a general character relating to the business of common carriers and the manner and method in which the same is conducted, are usually held, pursuant to the Act, at the City of Washington, D. C.⁸

This has been found more conducive to the convenience of attendance from different parts of the country.⁹

The hearings of contested cases, including oral arguments are held at its officers in the American National Bank Building, No. 1317 F Street, N. W., and the two weeks beginning with the first Monday in each month are set aside for that purpose.¹⁰

¶ B. SPECIAL SESSIONS.

The Act provides, that whenever the convenience of the public or the parties, may be promoted, or delay or expense prevented thereby, the Commission may hold sessions in any part of the United States. Or it may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of the Act.¹¹

In pursuance of the above authority the Commission holds special sessions, and investigations are made at various places in different parts of the country whenever the subject of investigation is local, or convenience of parties and witnesses will be subserved or the Commission be likely to be better informed as to the peculiar facts of the case. In selecting points for investigations of this character the Commission is governed largely by the convenience of parties and witnesses but, as is often the case, witnesses and parties on one side

⁸ Act to Regulate Commerce. Section 19.

⁹ Third Annual Report of I. C. C. (1889).

¹⁰ Rule 1, Rules of Practice before the I. C. C.

¹¹ See note 8, supra.

or the other are required to travel considerable distances as it is rarely possible to locate hearings so that both sides to a controversy will be equally accommodated.¹²

§ 784. Commission may prescribe Form of Procedure.

The statute provides that the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice.¹³

The Act further provides that the Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulations of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be to those in use in the Courts of the United States.¹⁴

In the exercise of this authority, the Commission has formulated and adopted a set of rules to govern the practice before it, as set forth in *Section 806, post*.

The statute provides however, that every vote and official act of the Commission shall be entered of record, and that its proceedings shall be public upon the request of either party interested.¹⁵

§ 785. Seal of the Commission.

The Commission is authorized by the Act to have an official seal and the Act further provides that this seal shall be judicially noticed.¹⁶

§ 786. Commissioners may administer Oaths and Affirmations.

Either of the members of the Commission is given authority by the Act to administer oaths or affirmations.¹⁷

¹² See note 9, *supra*.

¹³ Act to Regulate Commerce. Section 17.

¹⁴ *Ibid*.

¹⁵ *Ibid*.

¹⁶ *Ibid*.

¹⁷ *Ibid*.

§ 787. Commissioners may sign Subpoenas.

Either of the members of the Commission is given authority by the Act to sign subpoenas.

§ 788. Number of Commissioners constituting a Quorum.

A majority of the Commission constitutes a quorum for the transaction of business, but no Commissioner is permitted to participate in any hearing or proceeding in which he has a pecuniary interest.¹⁸

§ 789. Persons Claiming to be Damaged may elect whether to Complain to the Commission or Bring Suit in a United States Court.

The Act provides, that any person or persons claiming to be damaged by any common carrier subject to its provisions may either make complaint to the Commission or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of the Act, in any District or Circuit Court of the United States of competent jurisdiction, but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure therein provided for he or they will adopt.¹⁹

§ 790. Complaints to the Commission.**¶ A. HOW AND BY WHOM MADE.**

The statute provides that any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society, or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of the Act to Regulate Commerce in contravention of the provisions thereof, may apply

¹⁸ Act to Regulate Commerce. Section 17.

¹⁹ Act to Regulate Commerce. Section 9.

to said Commission by petition, which shall briefly state the facts.²⁰

¶ B. HOW COMPLAINT SERVED UPON CARRIERS.

The statute provides that upon filing complaint with the Commission a statement of the complaint thus made shall be forwarded by the Commission to the common carrier complained of, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission.²¹

¶ C. REPARATION BY CARRIERS BEFORE INVESTIGATION.

The Act provides, that if the common carrier complained of shall, within the time specified by the Commission, make reparation for the injury alleged to have been done, the carrier shall be relieved of liability to the complainant only for the particular violation of the law thus complained of.²²

¶ D. INVESTIGATION OF COMPLAINTS BY COMMISSION.

The Act makes it the duty of the Commission upon failure of a carrier to satisfy a complaint within the time specified in the order of the Commission, or if there shall appear to be any reasonable ground for investigating such complaint, to investigate the matters complained of in such manner and by such means as it shall deem proper.²³

¶ E. COMPLAINTS FORWARDED BY STATE RAILROAD COMMISSIONS.

The Act provides that the Commission shall, in like manner and with the same authority and power, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission.²⁴

²⁰ Act to Regulate Commerce. Section 13 (as amended June 18, 1910).

²¹ Ibid.

²² Ibid.

²³ Ibid.

²⁴ Ibid.

¶ F. COMMISSION MUST MAKE REPORT OF INVESTIGATION.

The Act provides that whenever an investigation shall be made by the Commission it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include findings of fact upon which the award is made.²⁵

¶ G. REPORTS OF INVESTIGATIONS MUST BE ENTERED OF RECORD.

All reports of investigations made by the Commission must be entered of record.²⁶

¶ H. SERVICE OF COPIES OF REPORTS ON PARTIES.

A copy of the report of investigation made by the Commission must be furnished to the party who may have complained and to any common carrier that may have been complained of.²⁷

¶ I. COMPLAINANT NEED NOT BE DIRECTLY DAMAGED.

The Act provides, that no complaint shall at any time be dismissed because of the absence of direct damage to the complainant.²⁸

§ 791. Power of Commission to restrain Enforcement of New Rate, Fare, Charge, or Classification, or Regulation or Practice affecting Same pending Investigation.

Section 15 of the Act to Regulate Commerce (*as amended June 18, 1910*) reads as follows: "Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once,

²⁵ Act to Regulate Commerce. Section 14.

²⁶ Act to Regulate Commerce. Section 19.

²⁷ See note 25, *supra*.

²⁸ See note 20, *supra*.

and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the Commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months."

§ 792. Preference to be given to Hearings involving Reasonableness of Rates.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that at any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of that amendment, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and that the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.^{28a}

^{28a} Act to Regulate Commerce. Section 15 (*as amended June 18, 1910*).

§ 793. Appearance of Parties.

The statute provides, that any party may appear before the Commission and be heard, in person or by attorney.²⁹

§ 794. Persons interested in Matters involved in Cases before Commission may be made Parties.

The statute provides, that in any proceeding for the enforcement of the provision of the statutes, relating to interstate commerce instituted before the Interstate Commerce Commission, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and that inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.³⁰

§ 795. Attendance and Testimony of Witnesses and Production of Documentary Evidence.

¶ A. POWER OF COMMISSION TO REQUIRE.

The statute provides, that the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, agreements, and documents relating to any matter under investigation.³¹

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing.³²

¶ B. COMMISSION MAY INVOKE AID OF COURT.

The Act provides, that in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any Court of the

²⁹ See note 13, *supra*.

³⁰ Section 2. Elkins Act.

³¹ Act to Regulate Commerce. Section 12.

³² *Ibid*.

United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents as authorized.³³

¶ C. PENALTY FOR DISOBEDIENCE TO ORDER OF THE COURT.

The statute provides, that any of the Circuit Courts of the United States within the jurisdiction of which any inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of the Act, or other person, issue an order requiring such common carrier or other person to appear before the Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and that any failure to obey such order of the Court may be punished by such Court as a contempt thereof.³⁴

¶ D. TESTIMONY MAY BE TAKEN BY DEPOSITION.

The testimony of any witness may be taken at the instance of a party in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer.³⁵

¶ E. COMMISSION MAY ORDER TESTIMONY TO BE TAKEN BY DEPOSITION.

The Commission may order testimony to be taken by deposition in a proceeding or investigation pending before it, at any stage of such proceeding or investigation.³⁶

¶ F. BEFORE WHOM DEPOSITION MAY BE TAKEN.

Deposition may be taken before any Judge of any Court of the United States or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not

³³ Act to Regulate Commerce. Section 12.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

being of counsel or attorney to either of the parties, or interested in the event of the proceeding or investigation.³⁷

¶ G. REASONABLE NOTICE MUST BE GIVEN.

Reasonable notice must first be given in writing by the party, or his attorney, proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of taking his deposition.³⁸

¶ H. COMPULSORY TESTIMONY BY DEPOSITION.

The statute provides, that any person may be compelled to appear and depose, and to produce documentary evidence in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission.³⁹ See *Paragraph B, supra*.

¶ I. MANNER OF TAKING DEPOSITIONS.

The Act provides, that every person deposing as provided above shall be cautioned and sworn (*or affirm, if he so request*) to testify the whole truth and be carefully examined.⁴⁰

His testimony must be reduced to writing by the magistrate taking the deposition, or under his direction, and after it has been reduced to writing, be subscribed by the deponent.⁴¹

¶ J. WHEN WITNESS IS IN A FOREIGN COUNTRY.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission.⁴²

³⁷ Act to Regulate Commerce. Section 12.

³⁸ Ibid.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid.

¶ K. DEPOSITION MUST BE FILED WITH COMMISSION.

The statute requires that all depositions be promptly filed with the Commission.⁴³

¶ L. FEES OF WITNESSES AND MAGISTRATES.

The Act provides, that witnesses whose depositions are taken pursuant thereof, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the Courts of the United States.⁴⁴

Witnesses summoned before the Commission are entitled by the statute to be paid the same fees and mileage that are paid witnesses in the Courts of the United States.⁴⁵

¶ M. CLAIM THAT TESTIMONY OR EVIDENCE WILL TEND TO CRIMINATE WILL NOT EXCUSE WITNESS.

The statute provides, that no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the Act to Regulate Commerce or of any amendments thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture.⁴⁶

¶ N. IMMUNITY TO TESTIFYING WITNESSES.

The statute provides, that no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he

⁴³ Act to Regulate Commerce. Section 12.

⁴⁴ Ibid.

⁴⁵ Act to Regulate Commerce. Section 18.

⁴⁶ Immunity of Witnesses Act; Feb. 11, 1893 [27 Stat. at L. 443], amended June 30, 1906 [June 30, 1906]; see also Section 12, Act to Regulate Commerce.

may testify or produce evidence, documentary or otherwise, before the Commission, or in obedience to its subpoena nor the subpoena of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.⁴⁷

The immunity granted above extends only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.⁴⁸

¶ O. PENALTY FOR NEGLECT OR REFUSAL TO ATTEND AND TESTIFY.

See *Section 773, ante*.

§ 796. Rehearing.

¶ A. COMMISSION MAY GRANT REHEARING.

The Act provides, that after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for a rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor is made to appear.⁴⁹

The Act further provides, that applications for rehearing shall be governed by such general rules as the Commission may establish.⁵⁰

¶ B. APPLICATION FOR REHEARING SHALL NOT OPERATE AS STAY OF PROCEEDINGS, UNLESS SO ORDERED BY COMMISSION.

The statute provides, that no application for rehearing shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or

⁴⁷ Immunity of Witnesses Act.

⁴⁸ Amendment of June 30, 1906, to Immunity of Witnesses Act, *supra*.

⁴⁹ Act to Regulate Commerce. Section 16-A.

⁵⁰ *Ibid*.

operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission.⁵¹

The statute further provides, that in case a rehearing is granted the proceeding thereupon shall conform as near as may be to the proceedings in an original hearing, except as the Commission may otherwise direct.⁵²

¶ C. THE COMMISSION MAY ON REHEARING, REVERSE, CHANGE OR MODIFY ORDER.

The statute provides, that if, in its judgment, after rehearing and consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly.⁵³

Any decision, order, or requirement made after rehearing, reversing, changing, or modifying the original determination is subject to the same provisions as an original order.⁵⁴

§ 797. Orders of Commission.

¶ A. WHEN EFFECTIVE.

The Act provides, that all orders of the Commission except orders for the payment of money shall take effect within such reasonable time, not less than thirty days.⁵⁵

¶ B. ORDERS SHALL CONTINUE IN FORCE NOT EXCEEDING TWO YEARS.

The Act provides that all orders of the Commission shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a Court of competent jurisdiction.⁵⁶

⁵¹ Act to Regulate Commerce. Section 16-A.

⁵² Act to Regulate Commerce. Section 16-A.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Act to Regulate Commerce. Section 15.

⁵⁶ Ibid.

Under the above provision an order relating to rates is not invalid because it fails to prescribe the time it shall remain in force, but in such case the order remains in force for two years, the maximum time prescribed by the statute.⁵⁷

¶ C. SERVICE OF ORDER OF COMMISSION BY MAILING.

The statute provides that every order of the Commission shall be forthwith served upon the designated agent of the carrier in the City of Washington or in such other manner as may be provided by law.⁵⁸

¶ D. COMMISSION MAY SUSPEND OR MODIFY ORDER.

The statute authorizes the Commission to suspend or modify its orders upon such notice and in such manner as it shall deem proper.⁵⁹

¶ E. CARRIERS MUST COMPLY WITH ORDER OF COMMISSION.

The Act makes it the duty of every common carrier, its agents and employees to observe and comply with the orders of the Commission so long as they shall remain in effect.⁶⁰

¶ F. PUNISHMENT BY FORFEITURE FOR FAILURE TO OBEY ORDER OF COMMISSION.

See *Section 776, ante*.

§ 798. Limitation of Actions before the Commission.

¶ A. CLAIMS MUST BE FILED WITHIN TWO YEARS.

All complaints for the recovery of damages must be filed with the Commission within two years from the time the cause of action accrues.⁶¹

Claims filed with the Commission since August 28, 1907, must have accrued within two years prior to the date when

⁵⁷ N. Y. C. & H. R. R. R. Co. v. I. C. C. (1909), 168 Fed. Rep. 131.

⁵⁸ Act to Regulate Commerce. Section 16 (as amended June 18, 1910).

⁵⁹ Ibid.

⁶⁰ Ibid.

⁶¹ Ibid.

they are filed, otherwise they are barred by the statute.⁶² Claims filed on or before August 28, 1907, are not affected by the two years limitation in the Act.⁶³

¶ B. ACCRUED CLAIMS AT PASSAGE OF ACT.

The Hepburn Amendment of June 29, 1906, provided that claims which accrued prior to the passage of that Act must be presented within one year.⁶⁴ However, this paragraph was eliminated from the statute by the Act of June 18, 1910.

§ 799. Docket of the Commission.

¶ A. FORMAL COMPLAINTS.

The Commission maintains a docket of the formal complaints heard by it which is similar to that kept by Courts of law except that there are no entries of costs. This contains a record of the style of the case, the names of complainant and defendant, the date of filing the complaint or petition, and all subsequent pleadings such as the answer, reply, demurrer, amendments, etc., hearings, arguments, transcripts of testimony, exhibits, stenographic notes if any, briefs, subpoenas issued, the report or finding of the Commission, the order or award, and all other minutes of proceedings.

This docket also contains a full record of the investigations of the Commission which have been instituted of its own motion and *ex parte* applications. Such cases are styled "In Re" or "In the Matter of." The cases are entered serially, complaints filed up to the amendment of June 29, 1906, being

⁶² Rule 10, Con. Rul. Bul. No. 4 (Dec. 2, 1907). See *Ocheltree Grain Co. v. T. & P. Ry. Co.* (1910), 18 I. C. C. R. 412.

⁶³ Rule 10, Con. Rul. Bul. No. 4 (Dec. 2, 1907).

⁶⁴ Act to Regulate Commerce, Section 16. The Interstate Commerce Act as amended June 29, 1906, was approved by the President on that date. By joint resolution of Congress approved on June 30, 1906, it was provided that the Act should not take effect until 60 days after its approval by the President. *Held*, That the Act became effective on June 29, 1906, and that the resolution was therefore powerless to postpone the operation of the statute. (*U. S. v. Standard Oil Co.*, 148 Fed. Rep. 719.)

number 879 and less; those cases filed subsequent to such amendment being higher than that number.

On July 2, 1909, the Commission adopted a rule providing for the consolidation under one docket number of all cases involving substantially the same subject matter.⁶⁵

¶ B. INFORMAL COMPLAINTS.

The docket of informal complaints contains all of the steps taken in the proceeding, including the adjustment effected or whatever disposition was made of the matter. This also contains a record of all correspondence had on the subject. Like the formal complaint docket the complaints are entered numerically. The first number under the amendment of June 29, 1906, was 3727.

§ 800. Commission may upon its Own Initiative enter upon Hearing concerning Propriety of New Rate, Fare, Charge, Classification, or Regulation.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that, whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice.^{65a}

§ 801. Power of Commission to inquire into Business of Carriers and keep itself Informed in Regard thereto.

The statute provides, that the Commission shall have authority to inquire into the management of the business of all common carriers subject to the provisions thereof, and shall

⁶⁵ See note 7, *supra*.

^{65a} Act, Section 15 (*as amended June 18, 1910*).

keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created.⁶⁶

§ 802. Commission required to execute and enforce the Provisions of the Act to Regulate Commerce.

The Act authorizes and requires the Commission to execute and enforce the provisions of the Act, and provides, that "upon request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission shall apply to institute in the proper Court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of the Act and for the punishment of all violations thereof and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States."⁶⁷

§ 803. Institution of Inquiries by the Commission of its own Motion.

The Act to Regulate Commerce (*as amended June 18, 1910*) provides that the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of the Act, or concerning which any question may arise under any provision of the Act, or relating to the enforcement of any of the provisions of the Act.⁶⁸

It further provides that the Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of the Act, in-

⁶⁶ See note 31, *supra*.

⁶⁷ *Ibid*.

⁶⁸ See note 20, *supra*.

cluding the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money.^{68a}

It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of the Act.⁶⁹

§ 804. Commission as a Board of Arbitration.

In its Annual Report to Congress for the year 1904,⁷⁰ the Commission stated: "In two instances⁷¹ during the past year the Commission has been asked by both shippers and carriers to adjudicate controversies between them concerning the adjustment of rates. In each case the questions involved were of manifest importance as affecting the business of competitive communities and the traffic of railway lines by which they were served. These questions had been the subject of prolonged contention between the parties and of unavailing efforts to harmonize by direct negotiation the conflicting interests of carriers and communities whose officers and representatives finally joined in invoking the friendly offices of the Commission.

"While the Commission is not in express terms authorized to act as a board of arbitration in matters referred to it by consent of the parties concerned, the subject of controversy and the issues involved in both these requests presented such a state of facts as would have justified a proceeding upon formal complaint or of inquiry upon our own motion, and were thus clearly within the spirit of the statute which defines

^{68a} See note 20, *supra*.

⁶⁹ See note 26, *supra*.

⁷⁰ Eighteenth Annual Report of I. C. C. (1904), page 23.

⁷¹ See proceedings entitled "In the Matter of Differential Freight Rates to and from North Atlantic Ports" (decided April 27, 1905), 11 I. C. C. R. 13, and "In the Matter of Freight Rates between Memphis and points in Arkansas" (decided August 15, 1905), 11 I. C. C. R. 180.

the functions of the Commission. Believing this view to be correct as it has proven to be unquestioned, the Commission accepted the responsibilities which it was thus asked to assume. The proceedings in form are strictly in accordance with the provisions of the Act although the voluntary submission by the adverse parties gives them in fact the nature of an arbitration."

§ 805. Effect of Amendment of June 18, 1910, upon Powers of Commission over pending Cases.

The amendment of June 18, 1910, provides that nothing contained therein shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the Acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this Act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.^{71a}

§ 806. Rules of Practice before the Commission in Cases and Proceedings under the Act to Regulate Commerce.

RULE I.

PUBLIC SESSIONS.

The general sessions of the Commission for hearing contested cases, including oral argument, will be held at its office in the American Bank Building, No. 1317 F. Street, N. W., Washington, D. C., and the two weeks beginning with the first Monday in each month are set aside for that purpose.

Special sessions may be held at other places as ordered by the Commission.

RULE II.

PARTIES TO CASES.

Any person, firm, company, corporation, or association, mer-

^{71a} Section 15, Mann-Elkins Bill, approved June 18, 1910.

cantile, agricultural, or manufacturing society, or other organization, body politic or municipal organization, or any common carrier, or the railroad commissioner or commission of any State or Territory, may complain to the Commission by petition, of anything done, or omitted to be done, in violation of the provisions of the Act to Regulate Commerce by any common carrier or carriers or other parties subject to the provisions of said Act. Where a complaint relates to the rates, regulations, or practice of a single carrier, no other carrier need be made a party, but if it relates to matters in which two or more carriers, engaged in transportation by continuous carriage or shipment, are interested, the several carriers participating in such carriage or shipment are proper parties defendant.

Where a complaint relates to rates, regulations, or practices of carriers operating different lines, and the object of the proceeding is to secure correction of such rates, regulations or practices on each of said lines, all the carriers operating such lines must be made defendants.

When the line of a carrier is operated by a receiver or trustee, both the carrier and its receiver or trustee should be made defendants in cases involving transportation over such line.

Persons or carriers not parties may petition in any proceeding for leave to intervene and be heard therein. Such petition shall set forth the petitioner's interest in the proceeding. Leave granted on such application shall entitle the intervenor to appear and be treated as a party to the proceeding, but no person not a carrier who intervenes in behalf of the defense shall have the right to file an answer or otherwise become a party, except to have notice of and appear at the taking of testimony, produce and cross examine witnesses, and be heard, in person or by counsel, on the argument of the case.

RULE III.

COMPLAINTS.

Complaints must be by petition setting forth briefly the

facts claimed to constitute a violation of the law. The name of the carrier or carriers complained against must be stated in full, and the address of the petitioner, with the name and address of his attorney or counsel, if any, must appear upon the petition. The petition need not be verified. The complainant must furnish as many copies of the petition as there may be parties complained against to be served and three additional copies for the use of the Commission.

The Commission will cause a copy of the petition, with notice to satisfy or answer the same within a specified time, to be served personally or by mail, in its discretion, upon each defendant.

Complaints which involve the same or substantially the same principle, subject, or state of facts, even though two or more rates or regulations are alleged to be unreasonable or discriminatory and numerous shipments are affected thereby, should be included in one complaint, in which the several rates, regulations, discriminations, and shipments are set out in items, exhibits, or paragraphs. Two or more complainants may join in one complaint against one or more carriers, and one complainant's complaints against two or more carriers may be included in one complaint, when the subject of complaint, the principle involved, or the state of facts is substantially the same. In other words, two or more complaints should not be filed when one complaint can be made fairly to cover the subject, the principle, or the facts.⁷²

If one complainant or two or more complainants file separate complaints which rest upon the same principle or upon the same or a substantially similar state of facts, the Commission will, in its discretion, consolidate the several complaints into one case, under one number and title, so that the same may be disposed of in one hearing and in one report.⁷³

Reparation will not ordinarily be awarded in a formal case attacking a rate as unreasonable or otherwise in violation of law unless the intent to claim reparation is specifically dis-

⁷² Rule 206, Con. Rul. Bul. No. 4 (July 2, 1909).

⁷³ Ibid.

closed therein, or in an amendment thereto, filed before the submission of said case. The Commission may, however, in the exercise of its discretion, upon good cause shown, and under unusual circumstances, deal specially with a particular claim for reparation.⁷⁴

Claim for reparation based upon a decision of the Commission filed by complainants not parties to the case in which such decision was rendered will not ordinarily be allowed unless reparation was claimed in the complaint upon which such decision of the Commission was based, or was awarded by the Commission. The Commission may, however, in the exercise of its discretion, upon good cause shown, and under unusual circumstances, specially consider a particular claim for reparation of this class.⁷⁵

Complaints for reparation must disclose as nearly as possible all the claims of complainant or complainants covered by or involved in the complaint, except that when a general rate adjustment or a rate under which many shipments have been made to many destinations, or from many points of origin by many shippers, is involved, complaint may contain specific prayer for reparation on all shipments, and the proving up as to shipments and amounts of reparation due thereon be left until the question of the reasonableness of the rate or rates and whether or not reparation should be awarded, have been decided. And each claimant for reparation under a decision that has been rendered must include all his shipments and claims in one complaint or statement.⁷⁶

RULE IV.

ANSWERS.

A defendant must answer within twenty days from the date of the notice above provided for, but the Commission may, in a particular case, require the answer to be filed within a shorter time. The time prescribed in any case may be

⁷⁴ Rule 206, Con. Rul. Bul. No. 4 (July 2, 1909).

⁷⁵ Ibid.

⁷⁶ Rule 206, Con. Rul. Bul. No. 4 (July 2, 1909).

extended, upon good cause shown by the Commission. The original answer must be filed with the secretary of the Commission at its office in Washington and a copy thereof at the same time served by the defendant personally or by mail upon the complainant who must forthwith notify the secretary of its receipt. The answer must specifically admit or deny the material allegations of the petition and also set forth the facts which will be relied upon to support any such denial. If a defendant shall make satisfaction before answering, a written acknowledgment thereof, showing the character and extent of the satisfaction given, must be filed by the complainant, and in that case the fact and manner of satisfaction, without other matter, may be set forth in the answer. If satisfaction be made after the filing and service of an answer, such written acknowledgment must also be filed by the complainant, and a supplemental answer setting forth the fact and manner of satisfaction must be filed by the defendant.

RULE V.

NOTICE IN NATURE OF DEMURRER.

A defendant who deems the petition insufficient to show a breach of legal duty may, instead of answering or formally demurring, serve on the complainant notice of hearing on the petition; and in such case the facts stated in the petition will be deemed admitted. A copy of the notice must at the same time be filed with the secretary of the Commission. The filing of an answer, however, will not be deemed an admission of the sufficiency of the petition, but a motion to dismiss for insufficiency may be made at the hearing.

RULE VI.

SERVICE OF PAPERS.

Copies of notices or other papers must be served upon the adverse party or parties, personally or by mail, and when any party has appeared by attorney service upon such attorney shall be deemed proper service upon the party.

RULE VII.

AMENDMENTS.

Upon application of any party, amendments to any petition or answer, in any proceeding or investigation, may be allowed by the Commission, in its discretion.

RULE VIII.

ADJOURNMENTS AND EXTENSIONS OF TIME.

Adjournments and extensions of time may be granted upon the application of any party, in the discretion of the Commission.

RULE IX.

STIPULATIONS.

The parties to any proceeding or investigation before the Commission may, by stipulation in writing filed with the secretary, agree upon the facts, or any portion thereof, involved in the controversy, which stipulation shall be regarded and used as evidence on the hearing. It is desired that the facts be thus agreed upon whenever practicable.

RULE X.

HEARINGS.

Upon issue being joined by the service of an answer or notice of hearing on the petition the Commission will assign a time and place for hearing the case, which will be at its office in Washington, unless otherwise ordered. Witnesses will be examined orally before the Commission, unless their testimony be taken or the facts be agreed upon as provided for in these rules. The complainant must in all cases establish the facts alleged to constitute a violation of the law, unless the defendant admits the same or fails to answer the petition. The defendant must also prove facts alleged in the answer, unless admitted by the petitioner and fully disclose its defense at the hearing.

In case of failure to answer, the Commission will take such proof of the facts as may be deemed proper and reasonable, and make such order thereon as the circumstances of the case appear to require.

Cases may be heard by one or more members of the Commission, or by a special agent or examiner, as ordered by the Commission. When testimony is directed to be taken by a special agent or examiner, such officer shall have power to administer oaths, examine witnesses, and receive evidence, and shall make report thereof to the Commission.

All cases shall be orally argued in Washington, D. C., or submitted upon briefs, unless otherwise ordered by the Commission.

RULE XI.

DEPOSITIONS.

The testimony of any witness may be taken by deposition, at the instance of a party, in any case before the Commission, and at any time after the same is at issue. The Commission may also order testimony to be taken by deposition, in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any authorized special agent or examiner of the Commission, judge of any court of the United States, or any commissioner of a circuit or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties or otherwise interested in the proceeding or investigation. Reasonable notice must be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, which notice shall state the name of the witness and the time and place of the taking of his deposition, and a copy of such notice shall be filed with the secretary of the Commission.

When testimony is to be taken on behalf of a common carrier in any proceeding instituted by the Commission on its own motion, reasonable notice thereof in writing must be given by such carrier to the secretary of the Commission.

Every person whose deposition is taken shall be cautioned

and sworn (*or may affirm, if he so request*) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing, which may be typewriting, by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the witness.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the secretary. All depositions must be promptly filed with the secretary.

RULE XII.

WITNESSES AND SUBPOENAS.

Subpoenas requiring the attendance of witnesses from any place in the United States to any designated place of hearing, for the purpose of taking the testimony of such witnesses orally before one or more members of the Commission, or an authorized special agent or examiner of the Commission, or by deposition, will, upon the application of either party or upon the order of the Commission directing the taking of such testimony, be issued by any member of the Commission.

Subpoenas for the production of books, papers, or documents (*unless directed to issue by the Commission upon its own motion*) will only be issued upon application in writing; and when it is sought to compel witnesses, not parties to the proceeding, to produce such documentary evidence, the application must be sworn to and must specify, as nearly as may be, the books, papers, or documents desired; that the same are in the possession of the witness or under his control; and also, by facts stated, show that they contain material evidence necessary to the applicant. Applications to compel a party to the proceeding to produce books, papers, or documents need only set forth in a general way the books, papers, or documents desired to be produced, and that the applicant believes they will be of service in the determination of the case.

Witnesses whose testimony is taken orally or by deposition,

and the magistrate or other officer taking such deposition, are severally entitled to the same fees as are paid for like services in the courts of the United States, such fees to be paid by the party at whose instance the testimony is taken.⁷⁷

RULE XIII.

DOCUMENTARY EVIDENCE.

Where relevant and material matter offered in evidence is embraced in a report, tariff, rate sheet, classification, book, pamphlet, written or printed statement, or document of any kind containing other matter not material or relevant and not intended to be put in evidence, such report, etc., in whole, shall not be received or allowed to be filed in a cause on hearing before this Commission or at any time during the pendency thereof, but counsel or other party offering the same shall also present in convenient and proper form for filing a copy of such material and relevant matter, and that only shall be received and allowed to be filed as evidence and made part of the record in such cause; provided, however, that, if practicable, such matter may be read and taken down by the reporter and thus made part of the record.

RULE XIV.

BRIEFS. ⁷⁸

Unless otherwise specially ordered, printed briefs shall be filed on behalf of the parties in each case. The brief for complainant and the brief or briefs for the defendants, or intervenors, shall contain an abstract of the evidence relied upon by the parties filing the same, and in such abstract reference shall be made to the pages of the record wherein the evidence appears. The abstract of evidence should follow the statement of the case and precede the argument.

⁷⁷ Fees of witnesses are fixed by law at \$1.50 for each day's attendance at the place of hearing or of taking deposition, and 5 cents per mile for going to said place from his place of residence and 5 cents per mile for returning therefrom.

⁷⁸ As amended by Rule 149, Conference Ruling Bulletin No. 4 (February 9, 1909).

Briefs shall be printed in 12-point type on antique-finished paper, $5\frac{7}{8}$ inches wide by 9 inches long, with suitable margins, double-leaded text and single-leaded citations.

At the close of the taking of testimony in each case the Commissioner or examiner before whom such testimony is taken shall fix the specific dates on or before which the briefs of the respective parties must be filed with the Commission and served on the adverse parties. The dates so fixed, unless otherwise ordered at said time, shall allow to the respective parties the following periods of time within which to file with the Commission and serve their respective briefs on the adverse parties, to wit: To the complainant, thirty days from the date of the conclusion of the testimony; to the defendants and interveners, fifteen days after the specific date fixed for the complainant; and to complainant for reply brief, ten days after the date fixed for defendant or interveners. If the briefs of the respective parties are not filed and served on the date fixed for each, the case will stand submitted without briefs on the date that defendants' or interveners' briefs are due. Briefs of parties not filed as aforesaid, and served on the respective parties on or before the specific dates fixed therefor, will not be received or considered by the Commission.

All briefs shall be filed with the secretary and shall be accompanied by notice showing service upon the adverse parties, and 15 copies of each brief shall be filed for the use of the Commission.

The parties will be required to comply strictly with this rule, and, except for good cause shown, no extension of time will be allowed. Application for extension of time in which to file brief shall be by petition in writing, stating the facts on which the application rests, which must be filed with the Commission at least five days before the time for filing such briefs has expired.

Application for oral argument may be made by any party at the close of the taking of the testimony or at any time of the filing of his brief. Such application can be granted only by the Commission.

RULE XV.

REHEARINGS.

Applications for reopening a case after final submission, or for rehearing after decision made by the Commission, must be by petition, and must state specifically the grounds upon which the application is based. If such application be to reopen the case for further evidence the nature and purpose of such evidence must be briefly stated and the same must not be merely cumulative. If the application be for a rehearing, the petition must specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the grounds of error; and when any decision, order, or requirement of the Commission is sought to be reversed, changed, or modified on account of facts and circumstances arising subsequent to the hearing, or of consequences resulting from compliance with such decision, order, or requirement which are claimed to justify a reconsideration of the case, the matters relied upon by the applicant must be fully set forth.

RULE XVI.

PRINTING OF PLEADINGS, ETC.

Pleadings, depositions, and other papers of importance shall be printed or in typewriting, and when not printed only one side of the paper shall be used.

RULE XVII.

COPIES OF PAPERS OR TESTIMONY.

Copies of any report, decision, order, or requirement of the Commission will be furnished without charge upon application to the secretary by any person or carrier party to the proceeding.

One copy of the testimony will be furnished by the Commission for the use of the complainant and one copy for the use of the defendant, without charge; and when two or more complainants or defendants have appeared at the hearing, such complainants or defendants must designate to whom the copy for their use shall be delivered.

RULE XVIII.

COMPLIANCE WITH ORDERS.

Upon the issuance of an order against any defendant or defendants, after hearing, investigation, and report by the Commission, such defendant or defendants must promptly notify the secretary of the Commission, upon the date when such order becomes effective, as to whether such defendant or defendants has complied or not with the provisions of said order; and when a change in rates is required, such notice must be given in addition to the filing of a schedule or tariff showing such change in rates.

RULE XIX.

APPLICATION BY CARRIERS UNDER PROVISIO CLAUSE OF FOURTH SECTION.

Any common carrier may apply to the Commission, under the proviso clause of the fourth section, for authority to charge for the transportation of like kind of property less for a longer than for a shorter distance over the same line, in the same direction, the shorter being included within the longer distance. Such application shall be by petition, which shall specify the places and traffic involved, the rates charged on such traffic for the shorter and longer distances, the carriers other than the petitioner which may be interested in the traffic, the character of the hardship claimed to exist, and the extent of the relief sought by the petitioner. Upon the filing of such a petition, the Commission will take such action as the circumstances of the case seem to require.

RULE XX.

INFORMATION TO PARTIES.

The secretary of the Commission will, upon request, advise any party as to the form of petition, answer, or other paper necessary to be filed in any case, and furnish such information from the files of the Commission as will conduce to a proper presentation of facts material to the controversy.

RULE XXI.

ADDRESS OF THE COMMISSION.

All complaints concerning anything done or omitted to be

done by any common carrier, and all petitions or answers in any proceeding, or applications in relation thereto, and all letters and telegrams for the Commission, must be addressed to Washington, D. C., unless otherwise specially directed.

FORMS.

No. 1.—COMPLAINT AGAINST A SINGLE CARRIER.

No. 2.—COMPLAINT AGAINST TWO OR MORE CARRIERS.

No. 3.—ANSWER.

No. 4.—NOTICE BY CARRIER UNDER RULE V.

No. 5.—SUBPOENA.

No. 6.—NOTICE OF TAKING DEPOSITIONS UNDER RULE XII.

These forms may be used in cases to which they are applicable, with such alterations as the circumstances may render necessary.

No. 1.

COMPLAINT AGAINST A SINGLE CARRIER.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
The Railroad Company. }

The petition of the above-named complainant respectfully shows:

I. That [*here let complainant state his occupation and place of business*].

II. That the defendant above named is a common carrier engaged in the transportation of passengers and property by railroad between points in the State of and points in the State of, and as such common carrier is subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III. That [*here state concisely the matters intended to be complained of. Continue numbering each succeeding paragraph as in Nos. I, II and III.*]

Wherefore the petitioner prays that the defendant may be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendant to cease and desist from said violations of the Act to Regulate Commerce, and for such order and further order as the Commission may deem necessary in the premises. [*The prayer may be varied so as to ask also for the ascertainment of lawful rates or practices and an order requiring the carrier to conform thereto. If reparation for any wrong or injury be desired, the petitioner should state the nature and extent of the reparation he deems proper.*]

Dated at, 19...

A. B.

[*Complainant's signature.*]

No. 2.

COMPLAINT AGAINST TWO OR MORE CARRIERS.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
The Railroad Company,
and
The Railroad Company.

The petition of the above-named complainant respectfully shows:

I. [*That here let complainant state his occupation and place of business.*]

II. That the defendants above named are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad [*or partly by railroad and partly by water, as the case may be*], between points in the State of and points in the State of, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

[*Then proceed as in Form 1.*]

No. 3.

ANSWER.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
The Railroad Company.

The above-named defendant, for answer to the complaint in this proceeding, respectfully states:

I. That [*here follow the usual admissions, denials and averments. Continue numbering each succeeding paragraph*].

Wherefore the defendant prays that the complainant in this proceeding is dismissed.

The Railroad Company,
By E. F.
[*Title of officer.*]

No. 4.

NOTICE BY CARRIER UNDER RULE V.

INTERSTATE COMMERCE COMMISSION.

A. B.
against
The Railroad Company.

Notice is hereby given under Rule V of the Rules of Practice in proceedings given before the Commission that a hearing is desired in this proceeding upon the facts as stated in the complaint.

The Railroad Company,
By E. F.
[*Title of officer.*]

No. 5.

SUBPOENA.

To

.....
You are hereby required to appear before in the matter of a complaint of against, as a witness on the part of, on the day of, 19.., at o'clock ... m., at, and bring with you then and there

Dated

[Seal.]

.....,
Commissioner.

.....,

.....,

Attorney for

(Notice.—Witness fees for attendance under this subpoena are to be paid by the party at whose instance the witness is summoned, and every copy of this summons for the witness must contain a copy of this notice.)

No. 6.

NOTICE OF TAKING DEPOSITIONS UNDER RULE XII.

INTERSTATE COMMERCE COMMISSION.

A. B.

against

The Railroad Company. }

You are hereby notified that G. H. will be examined before C. D., a [*title of officer or magistrate*], at, on the day of, 19.., at o'clock in the noon, as a witness for the above-named complainant [*or defendant, as the case may be*], according to Act of Congress in such case made and provided, and the Rules of Practice of the Interstate Commerce Commission, at which time and place you are notified to be present and take part in the examination of the said witness.

Dated, 19...

I. J.

[*Signature of complainant or defendant, or of counsel.*]

To A. B., the above-named complainant, [*or The Railroad Company, the above-named defendant; or to K. L., counsel for the above-named complainant or defendant*].

CHAPTER XLVIII.

APPENDICES.

	PAGE
Appendix 1. Act to Regulate Commerce as Originally Enacted.	1054
Appendix 2. Amendment of March 2, 1889.....	1067
Appendix 3. Amendment of February 10, 1891.....	1078
Appendix 4. Amendment of February 8, 1895.....	1080
Appendix 5. Amendment of June 29, 1906, Hepburn Act.....	1081
Appendix 6. Amendment April 13, 1908.....	1100
Appendix 7. Amendment February 25, 1909.....	1101
Appendix 8. Act of June 18, 1910.....	1102
Appendix 9. The Act to Regulate Commerce as Amended to Date	1129
Appendix 10. Immunity of Witnesses Act.....	1160
Appendix 11. Elkins Act as Originally Enacted.....	1162
Appendix 12. Elkins Act as Amended to Date.....	1165
Appendix 13. Expediting Act	1169
Appendix 14. Government-Aided Railroad Act.....	1170
Appendix 15. The Safety Appliance Acts.....	1174
Appendix 16. Block-Signal Resolution	1181
Appendix 17. Interlocking Act	1181
Appendix 18. Accident-Reports Act	1182
Appendix 19. Coal and Oil Resolutions.....	1184
Appendix 20. Arbitration Act	1187
Appendix 21. Medal of Honor Act	1193
Appendix 22. Regulations Governing the Award of Life-Saving Medals under the Medal of Honor Act.....	1194
Appendix 23. Lake Erie and Ohio River Ship Canal Act.....	1195
Appendix 24. Hours of Service Act.....	1196
Appendix 25. Ash Pan Act	1198
Appendix 26. Transportation of Explosives Act, March 4, 1909...	1199
Appendix 27. District of Columbia Street Railways Act.....	1201
Appendix 28. Act prescribing form of accounting for corpora- tion engaged in manufacture of Gas or Electricity in District of Columbia.....	1203

APPENDIX 1.

Act to Regulate Commerce as Originally Enacted.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory, as aforesaid.*

The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful.

Sec. 2. That if any common carrier subject to the provisions of this Act, shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the

provisions of this Act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carriers shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this Act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property, under substantially similar circumstances and conditions, for a shorter than for a longer distance over the same line, in the same direction, the shorter being included within the longer distance; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge and receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Commission appointed under the provisions of this Act, such common carrier may, in special cases, after investigation by the Commission, be authorized to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section of this Act.

Sec. 5. That it shall be unlawful for any common carrier

subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of any agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 6. That every common carrier subject to the provisions of this Act shall print and keep for public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time upon its railroad, as defined by the first section of this Act. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force upon such railroad, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, of at least the size of ordinary pica, and copies for the use of the public shall be kept in every depot or station upon any such railroad, in such places and in such form that they can be conveniently inspected.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep for public inspection, at every depot where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production; and any law in conflict with this section is hereby repealed.

No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plain-

ly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept for public inspection. Reductions in such published rates, fares, or charges may be made without previous public notice; but whenever any such reduction is made, notice of the same shall immediately be publicly posted and the changes made shall immediately be made public by printing new schedules, or shall immediately be plainly indicated upon the schedules at the time in force and kept for public inspection.

And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of passengers or property, or for any service in connection therewith, than is specified in such published schedule of rates, fares, and charges as may, at the time, be in force.

Every common carrier subject to the provisions of this Act shall file with the Commission hereinafter provided for copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall, from time to time, prescribe the measure of publicity which shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carriers to publish, and the places in which they shall be published; but no common

carrier, party to any such joint tariff, shall be liable for the failure of any other common carrier, party thereto, to observe and adhere to the rates, fares, or charges thus made and published.

If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any Circuit Court of the United States in the judicial district wherein the principal office of said common carrier is situated or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this Act; and failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners, as complainants, may also apply, in any such Circuit Court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act.

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this Act, to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

Sec. 8. That in case any common carrier subject to the

provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the Court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Sec. 9. That any persons or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any District or Circuit Court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for, he or they will adopt. In any such action brought for the recovery of damages the Court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 10. That any common carrier subject to this provision of this Act, or whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willfully suffer or permit to be done, any act, matter or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter or thing in this Act required to be done, or shall cause or willfully suffer or permit any act, matter or thing so directed or required by this Act to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or

abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense.

Sec. 11. That a Commission is hereby created and established to be known as the Inter-State Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commission first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this Act, or owning stock or bonds thereof, or who is in any manner peculiarly interested therein, shall enter upon the duties of or hold such office. Said Commissioner shall not engage in any other business, vocation or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission.

Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers, subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and for the purposes of this Act the Commission shall have power to require the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents, relating to any matter under investigation, and to that end may invoke the aid of any Court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents, under the provisions of this section.

And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other persons, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such Court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 13. That any person, firm, corporation, or association, or any mercantile, agricultural, or manufacturing society, or any body politic or municipal organization complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the charges thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint or to answer the same in writing within a reasonable time, to be specified by the Commission. If such common carrier, with the time specified, shall make reparation for the injury alleged to have been done, said carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall in like manner investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory, at the request of such commissioner or commission, and may institute any inquiry on its own motion in the same manner and to the same effect as though complaint had been made.

No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of

fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

All reports of investigation made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

Sec. 15. That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties complainant, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation, or to make reparation for the injury so found to have been done, or both, within a reasonable time, to be specified by the Commission; and if, within the time specified, it shall be made to appear to the Commission that such common carrier has ceased from such violation of law, and has made reparation for the injury found to have been done, in compliance with the report and notice of the Commission, or to the satisfaction of the party complaining, a statement to that effect shall be entered of record by the Commission, and the said common carrier shall thereupon be relieved from further liability or penalty for such particular violation of law.

Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate or refuse or neglect to obey any lawful order or requirement of the Commission in this Act named, it shall be the duty of the Commission, and lawful for any company or person interested in such order or requirement, to apply, in a summary way, by petition, to the Circuit Court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case

may be; and the said Court shall have power to hear and determine the matter, on such short notice to the common carrier complained of as the Court shall deem reasonable; and such notice may be served on such common carrier, his or its officers, agents, or servants, in such manner as the Court shall direct; and said Court shall proceed to hear and determine the matter speedily as a Court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such Court shall have power, if it think fit, to direct and prosecute, in such mode and by such persons as it may appoint, all such inquiries as the Court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such Court, on such hearing or on report of any such person or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such Court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such Court to issue writs of attachment, or any other process of said Court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction or other proper process, mandatory or otherwise; and said Court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money not exceeding for each carrier or person in default the sum of five hundred dollars for every day after a day to be named in the order that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the Court shall direct, either to the party complaining, or into Court to abide the ultimate decision of the Court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment

or order in the nature of a writ of execution, in like manner as if the same had been recovered by a final decree in personam in such Court. When the subject in dispute shall be to the value of two thousand dollars or more, either party to such proceeding before said Court may appeal to the Supreme Court of the United States, under the same regulations now provided by the law in respect of security for such appeal; but such appeal shall not operate to stay or supersede the order of the Court or the execution of any writ or process thereon; and such Court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States. For the purpose of this Act, excepting its penal provisions, the Circuit Courts of the United States shall be deemed to be always in session.

Section 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the Courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations.

Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the salaries of judges of the Courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other

employees as it may find necessary to the proper performance of its duties, subject to the approval of the Secretary of the Interior.

The Commission shall be furnished by the Secretary of the Interior with suitable offices and all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the Courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation in any other places than in the city of Washington, shall be allowed and paid, on the presentation of itemized vouchers therefor, approved by the chairman of the Commission and the Secretary of the Interior.

Sec. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or of the parties may be promoted or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipment; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance-sheet. Such reports shall also contain such information in relation to rates or regulations con-

cerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the Commission may require; and the said Commission may, within its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe (if in the opinion of the Commission it is practicable to prescribe such uniformity and methods of keeping accounts) a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report to the Secretary of the Interior, which shall be by him transmitted to Congress, and copies of which shall be distributed as are the other reports issued from the Interior Department. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary.

Sec. 22. That nothing in this Act shall apply to the carriage, storage, or hauling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this Act.

Sec. 23. That the sum of one hundred thousand dollars is hereby appropriated for the use and purposes of this Act for the fiscal year ending June thirtieth, Anno Domini eighteen hundred and eighty-eight, and the intervening time anterior thereto.

Sec. 24. That the provisions of Sections 11 and 18 of this Act, relating to the appointment and organization of the Commission herein provided for, shall take effect immediately,

and the remaining provisions of this Act shall take effect sixty days after its passage.

(24 Statutes at Large, 379; I Supp. to Rev. Stat. U. S., 529, C. 104 approved February 4, 1887, and in effect April 5, 1887.)

APPENDIX 2.

Amendment of March 2, 1889.

Sec. 1. That Section 6 of an Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:

"Sec. 6. That every common carrier subject to the provisions of this Act, shall print and keep open to public inspection, schedules showing the rates and fares and charges for the transportation of passengers and property which any common carrier has established and which are in force at the time upon its route. The schedules printed as aforesaid by any such common carrier shall plainly state the places upon its railroad between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be posted in two public and conspicuous places, in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected.

"Any common carrier subject to the provisions of this Act, receiving freight in the United States to be carried through a foreign country to any place in the United States, shall also, in like manner, print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States, through a foreign country into the United States, the through rate on which shall not have been made public as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if

said freight were of foreign production; and any law in conflict with this section is hereby repealed.

"No advance shall be made in the rates, fares, and charges which have been established and published as aforesaid by any common carrier in compliance with the requirements of this section, except after ten days' public notice, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. Reductions in such published rates, fares, or charges shall only be made after three days' previous public notice, to be given in the same manner that notice of an advance in rates must be given.

"And when any such common carrier shall have established and published its rates, fares, and charges in compliance with the provisions of this section, it shall be unlawful for such common carrier to charge, demand, collect, or receive from any person or persons a greater or less compensation, for the transportation of passengers or property, or for any services in connection therewith, than is specified in such published schedule of rates, fares, and charges as may at the time be in force.

"Every common carrier subject to the provisions of this Act, shall file with the Commission hereinafter provided for, copies of its schedules of rates, fares, and charges which have been established and published in compliance with the requirements of this section, and shall promptly notify said Commission of all changes made in the same. Every such common carrier shall also file with said Commission, copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party. And in cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several common carriers operating such lines or routes establish joint tariffs or rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall also, in like manner, be filed with said Commission. Such joint rates, fares, and charges on such continuous lines so filed as aforesaid shall be made public by such common carriers when directed by said Commission, in so far as may, in the judgment of the Commission, be deemed practicable; and said Commission shall, from time to time, prescribe the measure of publicity which

shall be given to such rates, fares, and charges, or to such part of them as it may deem it practicable for such common carrier to publish, and the places in which they shall be published.

“No advance shall be made in joint rates, fares, and charges, shown upon joint tariffs, except after ten days’ notice to the Commission, which shall plainly state the changes proposed to be made in the schedule then in force, and the time when the increased rates, fares, or charges will go into effect. No reduction shall be made in joint rates, fares, and charges, except after three days’ notice, to be given to the Commission as is above provided in the case of an advance of joint rates. The Commission may make public such proposed advances, or such reductions, in such manner as may, in its judgment, be deemed practicable, and may prescribe from time to time, the measure of publicity which common carriers shall give to advances or reductions in joint tariffs.

“It shall be unlawful for any common carrier, party to any joint tariff, to charge, demand, collect, or receive from any person or persons a greater or less compensation for the transportation of persons or property, or for any services in connection therewith, between any points as to which a joint rate, fare, or charge is named thereon than is specified in the schedule filed with the Commission in force at the time.

“The Commission may determine and prescribe the form in which the schedules, required by this section to be kept open to public inspection, shall be prepared and arranged, and may change the form from time to time as shall be found expedient.

“If any such common carrier shall neglect or refuse to file or publish its schedules or tariffs of rates, fares, and charges as provided in this section, or any part of the same, such common carrier shall, in addition to other penalties herein prescribed, be subject to a writ of mandamus, to be issued by any Circuit Court of the United States in the judicial district wherein the principal office of said common carrier is situated, or wherein such offense may be committed, and if such common carrier be a foreign corporation, in the judicial circuit wherein such common carrier accepts traffic and has an agent to perform such service, to compel compliance with the aforesaid provisions of this section; and such writ shall issue in the name of the people of the United States, at the relation of the Commissioners appointed under the provisions of this Act; and the failure to comply with its requirements shall be punishable as and for a contempt; and the said Commissioners,

as complainants, may also apply, in any such Circuit Court of the United States, for a writ of injunction against such common carrier, to restrain such common carrier from receiving or transporting property among the several States and Territories of the United States, or between the United States and adjacent foreign countries, or between ports of transshipment and of entry and the several States and Territories of the United States, as mentioned in the first section of this Act, until such common carrier shall have complied with the aforesaid provisions of this section of this Act."

Sec. 2. That Section 10 of said Act is hereby amended so as to read as follows:

"Sec. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person, acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done, not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any District Court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges, for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the Court.

"Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to

obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court, for each offense.

“Any person and any officer or agent of any corporation or company who shall deliver property for transportation to any common carrier, subject to the provisions of this Act, or for whom as consignor or consignee any such carrier shall transport property, who shall knowingly and willfully, by false billing, false classification, false weighing, false representation of the contents of the package, or false report of weight, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent or agents, obtain transportation for such property at less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the district in which such offense was committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court.

“If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person, or such officer or agent of such corporation or company, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any Court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the Court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly

or severally, in an action on the case to be brought by any consignor or consignee discriminated against in any Court of the United States of competent jurisdiction for all damages caused by or resulting therefrom."

Sec. 3. That Section 12 of said Act is hereby amended so as to read as follows:

"Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply, to institute in the proper Court and to prosecute, under the direction of the Attorney-General of the United States, all necessary proceedings for the enforcement of the provisions of this Act, and for the punishment of all violations thereof; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpoenas, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation, and in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any Court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

"And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such Court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not

excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding."

Sec. 4. That Section 14 of said Act is hereby amended so as to read as follows:

"Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall include the findings of fact upon which the conclusions of the Commission are based, together with its recommendation as to what reparation, if any, should be made by the common carrier to any party or parties who may be found to have been injured; and such findings so made shall thereafter, in all judicial proceedings, be deemed prima facie evidence as to each and every fact found.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained, in all Courts of the United States, and of the several States, without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual report."

Sec. 5. That Section 16 of said Act is hereby amended so as to read as follows:

"Sec. 16. That whenever any common carrier, as defined in and subject to the provisions of this Act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement of the Commission created by this Act, not founded upon a controversy requiring a trial by jury, as provided by the seventh amendment to the Constitution of the United States, it shall be lawful for the Commission or for any company or person interested in such order or requirement, to apply in a summary way, by petition, to the Circuit Court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience, as the case may be; and the said Court shall have power to hear and determine the matter, on such

short notice to the common carrier complained of, as the Court shall deem reasonable; and such notice may be served on such common carrier, his or her officers, agents, or servants, in such manner as the Court shall direct; and said Court shall proceed to hear and determine the matter speedily as a Court of equity, and without the formal pleadings and proceedings applicable to ordinary suits in equity, but in such manner as to do justice in the premises; and to this end such Court shall have power, if it think fit, to direct and prosecute in such mode and by such persons as it may appoint, all such inquiries as the Court may think needful to enable it to form a just judgment in the matter of such petition; and on such hearing the findings of fact in the report of said Commission shall be prima facie evidence of the matters therein stated; and if it be made to appear to such Court, on such hearing or on report of any such persons or persons, that the lawful order or requirement of said Commission drawn in question has been violated or disobeyed, it shall be lawful for such Court to issue a writ of injunction or other proper process, mandatory or otherwise, to restrain such common carrier from further continuing such violation or disobedience of such order or requirement of said Commission, and enjoining obedience to the same; and in case of any disobedience of any such writ of injunction or other proper process, mandatory or otherwise, it shall be lawful for such Court to issue writs of attachment, or any other process of said Court incident or applicable to writs of injunction or other proper process, mandatory or otherwise, against such common carrier, and if a corporation, against one or more of the directors, officers, or agents of the same, or against any owner, lessee, trustee, receiver, or other person failing to obey such writ of injunction, or other proper process, mandatory or otherwise; and said Court may, if it shall think fit, make an order directing such common carrier or other person so disobeying such writ of injunction or other proper process, mandatory or otherwise, to pay such sum of money, not exceeding for each carrier or person in default the sum of five hundred dollars for every day, after a day to be named in the order, that such carrier or other person shall fail to obey such injunction or other proper process, mandatory or otherwise; and such moneys shall be payable as the Court shall direct, either to the party complaining or into Court, to abide the ultimate decision of the Court, or into the Treasury; and payment thereof may, without prejudice to any other mode of recovering the same, be enforced by attachment or order in the nature of a writ of

execution, in like manner as if the same had been recovered by a final decree in personam in such Court. When the subject in dispute shall be of the value of two thousand dollars or more, either party to such proceeding before said Court, may appeal to the Supreme Court of the United States, under the same regulations now provided by law in respect of security for such appeal; but the appeal shall not operate to stay or supersede the order of the Court or the execution of any writ or process thereon; and such Court may, in every such matter, order the payment of such costs and counsel fees as shall be deemed reasonable. Whenever any such petition shall be filed or presented by the Commission it shall be the duty of the district attorney, under the direction of the Attorney-General of the United States, to prosecute the same; and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States.

“If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury, as provided by the Seventh Amendment to the Constitution of the United States, and any such common carrier shall violate or refuse or neglect to obey or perform the same, after notice given by said Commission as provided in the fifteenth section of this Act, it shall be lawful for any company or person interested in such order or requirement to apply in a summary way by petition to the Circuit Court of the United States sitting as a Court of law in the judicial district in which the carrier complained of has its principal office, or in which the violation or disobedience of such order or requirement shall happen, alleging such violation or disobedience as the case may be; and said Court shall, by its order, then fix a time and place for the trial of said cause, which shall not be less than twenty nor more than forty days from the time said order is made, and it shall be the duty of the marshal of the district in which said proceeding is pending to forthwith serve a copy of said petition, and of said order, upon each of the defendants, and it shall be the duty of the defendants to file their answers to said petition within ten days after the service of the same upon them as aforesaid. At the trial (of) the findings of fact of said Commission as set forth in its report shall be prima facie evidence of the matters therein stated, and if either party shall demand a jury or shall omit to waive a jury the Court shall, by its order, direct the marshal forthwith to summon a jury to try the cause; but if all the parties shall waive a jury in writing,

then the Court shall try the issues in said cause and render its judgment thereon. If the subject in dispute shall be of the value of two thousand dollars or more, either party may appeal to the Supreme Court of the United States under the same regulations now provided by law in respect to security for such appeal; but such appeal must be taken within twenty days from the day of the rendition of the judgment in said Circuit Court. If the judgment of the Circuit Court shall be in favor of the party complaining, he or they shall be entitled to recover a reasonable counsel or attorney's fee, to be fixed by the Court, which shall be collected as part of the costs in the case. For the purposes of this Act, excepting its penal provisions, the Circuit Courts of the United States shall be deemed to be always in session."

Sec. 6. That Section 17 of said Act is hereby amended so as to read as follows:

"Sec. 17. That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the Courts of the United States. Any party may appear before said Commission and be heard, in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas."

Sec. 7. That Section 18 of said Act is hereby amended so as to read as follows:

"Sec. 18. That each Commissioner shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the Judges of the Courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its

duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the Courts of the United States.

"All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor, approved by the chairman of the Commission."

Sec. 8. That Section 21 of said Act is hereby amended so as to read as follows:

"Sec. 21. That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission."

Sec. 9. That Section 22 of said Act is hereby amended so as to read as follows:

"That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States. State or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this Act shall be construed to prevent railroads from giving free carriage

to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this Act."

Sec. 10. That the Circuit and District Courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the Act to which this is a supplement and all Acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the Court, or otherwise, as the Court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held to exclude or interfere with other remedies provided by this Act or the Act to which it is a supplement.

(25 Statutes at Large, 855; 1 Supp. to Rev. Stat. U. S., 684. C. 382.)

APPENDIX 3.

Amendment of February 10, 1891.

Sec. 1. That Section 12 of an Act entitled "An Act to Regulate Commerce," approved February fourth, eighteen hundred and eighty-seven, be, and it is hereby, amended so as to read as follows:

"Sec. 12. That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which

the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper Court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the Courts of the United States; and for the purposes of this Act, the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

“Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena, the Commission, or any party to a proceeding before the Commission, may invoke the aid of any Court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

“And any of the Circuit Courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey the subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the Court may be punished by such Court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

“The testimony of any witness may be taken, at the instance of a party, in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commis-

sion may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or superior court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party or his attorney proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

"Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his direction, and shall, after it has been reduced to writing, be subscribed by the deponent.

"If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission."

Witnesses whose depositions are taken pursuant to this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like service in the courts of the United States.

(26 Statutes at Large, 743; 1 Supp. to Rev. Stat., U. S., 891. C. 128.)

APPENDIX 4.

Amendment of February 8, 1895.

Sec. 1. That Section 22 of an Act to regulate Commerce, approved February fourth, eighteen hundred and eighty-seven, and as amended March second, eighteen hundred and eighty-

nine, be, and is hereby, amended by adding thereto the following proviso:

“Provided further, That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier subject to the provisions of this Act, shall issue any such joint interchangeable mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission, copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by Section 6 of this Act; and all the provisions of said Section 6 relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said Section 6. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of Section 10 of this Act shall apply to any violation of the requirements of this proviso.”

(28 Statutes at Large, 643; 2 Supp. to Rev. Stat. U. S., 369. C. 61.)

APPENDIX 5.

Amendment of June 29, 1906, Hepburn Act.

Sec. 1. That Section 1 of an Act entitled “An Act to Regulate Commerce,” approved February fourth, eighteen hundred and eighty-seven, be amended so as to read as follows:

“Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and

partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States, to an adjacent foreign country, or from any place in the United States, through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

“The term ‘common carrier’ as used in this Act shall include express companies and sleeping car companies. The term ‘railroad,’ as used in this Act, shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term ‘transportation’ shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor,

and to establish through rates and just and reasonable rates applicable thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful.

"No common carrier subject to the provisions of this Act, shall, after January 1, 1907, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the national homes or state homes for disabled volunteer soldiers, and of soldiers' and sailors' homes, including those about to enter and those returning home after discharge, and boards of managers of such homes; to necessary caretakers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars, nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce

with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, produced by it, or under its authority, or which it may own in whole, or in part, or in which it may have any interest direct or indirect except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

"Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonable, practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper, such shipper may make complaint to the Commission, as provided in Section 13 of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor and the Commission may make an order, as provided in Section 15 of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Sec. 2. That Section 6 of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 6. That every common carrier subject to the provisions of this Act, shall file with the Commission created by this Act and print and keep open to public inspection, schedules

showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print and keep open to public inspection as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

“Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner, print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates, established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight for shipment; and any freight shipped from the United States through a foreign country into the United States, the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

“No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to

the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection. *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting, and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

“The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

“Every common carrier subject to this Act shall also file with said Commission, copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

“The Commission may determine and prescribe the form in which the schedules, required by this section to be kept open to public inspection, shall be prepared and arranged and may change the form from time to time as shall be found expedient.

“No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor

extend to any shipper or person any privilege or facilities in the transportation of passengers or property, except such as are specified in such tariffs: *Provided*, That wherever the word 'carrier' occurs in this Act it shall be held to mean 'common carrier.'

"That in time of war or threatened war, preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic."

That Section 1 of the Act entitled "An Act to further regulate Commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, be amended so as to read as follows:

"That anything done or omitted to be done by a corporation common carrier, subject to the Act to Regulate Commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier, subject to said Acts, to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to Regulate Commerce and the Acts amendatory thereof whereby any such property, shall, by any device whatever, be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to Regulate Commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give,

or solicit, accept, or receive any such rebates, concessions, or discrimination, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of this Act, or the Act to Regulate Commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another, it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

“In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to Regulate Commerce or Acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this Act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

“Any person, corporation, or company who shall deliver property for interstate transportation to any common carrier, subject to the provisions of this Act, or from whom as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common car-

rier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this Act, shall, in addition to any penalty provided by this Act, forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States, is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction, a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action, may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be."

Sec. 3. That Section 14 of said Act, as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 14. That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decisions, order or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

"All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

"The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publication shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports."

Sec. 4. That Section 15 of said Act be amended so as to read as follows:

"Sec. 15. That the Commission is authorized and empowered, and it shall be its duty, whenever, after full hearing upon a complaint made as provided in Section 13 of this Act, or upon complaint of any common carrier, it shall be of the opinion that any of the rates, or charges whatsoever, demanded, charged, or collected by any common carrier or carriers, subject to the provisions of this Act, for the transportation of persons or property as defined in the first section of this Act, or that any regulations or practices whatsoever of such carrier or carriers affecting such rates, are unjust and unreasonable, or unjustly discriminatory, or unduly preferential or prejudicial, or otherwise in violation of any of the provisions of this Act, to determine and prescribe what will be the just and reasonable rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged; and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed; and to make an order that the carrier shall cease and desist from such violation, to the extent to which the Commission find the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation in excess of the maximum rate or charge so prescribed, and shall conform to the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than 30 days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

"The Commission may also, after hearing on a complaint, establish through routes and joint rates as the maximum to be charged and prescribe the division of such rates as hereinbefore provided, and the terms and conditions under which such through routes shall be operated, when that may be

necessary to give effect to any provision of this Act, and the carriers complained of have refused or neglected to voluntarily establish such through routes and joint rates provided no reasonable or satisfactory through route exists, and this provision shall apply when one of the connecting carriers is a water line.

"If the owner of property transported under this Act, directly or indirectly renders any service connected with such transportation, or furnishes any instrumentalities used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the service so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for in this section.

"The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act."

Sec. 5. That Section 16 of said Act as amended March second, eighteen hundred and eighty-nine, be amended so as to read as follows:

"Sec. 16. That if, after hearing on a complaint made as provided in Section 13 of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay the complainant the sum to which he is entitled on or before a day named.

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the Circuit Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner

shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the Circuit Court within one year from the date of the order, and not after: *Provided*, That claims accrued prior to the passage of this Act may be presented within one year.

"In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

"Every order of the Commission shall be forthwith served by mailing to any one of the principal officers or agents of the carrier at his usual place of business a copy thereof; and the registry mail receipt shall be prima facie evidence of the receipt of such order by the carrier in due course of mail.

"The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

"It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of Section 15 of this Act, shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recover-

able in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

"It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States. The Commission may, with the consent of the Attorney-General, employ special counsel in any proceeding under this Act, paying the expenses of such employment out of its own appropriation.

"If any carrier fails or neglects to obey any order of the Commission, other than for the payment of money, while the same is in effect, any party injured thereby, or the Commission in its own name, may apply to the Circuit Court in the district where such carrier has its principal operating office, or in which the violation or disobedience of such order shall happen, for an enforcement of such order. Such application shall be by petition, which shall state the substance of the order and the respect in which the carrier has failed of obedience, and shall be served upon the carrier in such manner as the court may direct, and the court shall prosecute such inquiries and make such investigations, through such means as it shall deem needful in the ascertainment of the facts at issue or which may arise upon the hearing of such petition. If, upon such hearing as the court may determine to be necessary, it appears that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by writ of injunction, or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it, or them, obedience to the same; and in the enforcement of such process the court shall have those powers ordinarily exercised by it in compelling obedience to its writs of injunction and mandamus.

"From any action upon such petition an appeal shall lie by either party to the Supreme Court of the United States, and in such court the case shall have priority in hearing and determination over all other causes except criminal causes, but such appeal shall not vacate or suspend the order appealed from.

"The venue of suits brought in any of the Circuit Courts

of the United States against the Commission to enjoin, set aside, annul, or suspend any order or requirement of the Commission shall be in the district where the carrier against whom such order or requirement may have been made has its principal operating office, and may be brought at any time after such order is promulgated. And if the order or requirement has been made against two or more carriers, then in the district where any one of said carriers has its principal operating office, and if the carrier has its principal operating office in the District of Columbia then the venue shall be in the district where said carrier has its principal office; and jurisdiction to hear and determine such suits is hereby vested in such courts. The provisions of 'An Act to expedite the hearing and determination of suits in equity, and so forth,' approved February eleventh, nineteen hundred and three, shall be, and are hereby, made applicable to all such suits, including the hearing on an application for a preliminary injunction, and are also made applicable to any proceeding in equity to enforce any order or requirement of the Commission, or any of the provisions of the Act to Regulate Commerce approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof or supplemental thereto. It shall be the duty of the Attorney-General in every such case to file the certificate provided for in said expediting Act of February eleventh, nineteen hundred and three, as necessary to the application of the provisions thereof, and upon appeal as therein authorized to the Supreme Court of the United States, the case shall have in such court priority in hearing and determination over all other causes except criminal causes: *Provided*, That no injunction, interlocutory order or decree suspending or restraining the enforcement of an order of the Commission shall be granted except on hearing after not less than five days' notice to the Commission. An appeal may be taken from any interlocutory order or decree granting or continuing an injunction in any suit, but shall lie only to the Supreme Court of the United States: *Provided further*, That the appeal must be taken within thirty days from the entry of such order or decree and it shall take precedence in the appellate court over all other causes, except causes of like character and criminal causes.

"The copies of schedules and tariffs of rates, fares, and charges, and of all contracts, agreements, or arrangements between common carriers, filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual reports of carriers made to the Commission, as

required by the provisions of this Act, shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of or extracts from any of said schedules, tariffs, contracts, agreements, arrangements, or reports made public records as aforesaid, certified by the secretary under its seal, shall be received in evidence with like effect as the originals."

Sec. 6. That a new section be added to said Act immediately after Section 16, to be numbered as Section 16a, as follows:

"Sec. 16a. That after a decision, order, or requirement has been made by the Commission in any proceeding, any party thereto may at any time, make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement, made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order."

Sec. 7. That Section 20 of said Act be amended so as to read as follows:

"Sec. 20. That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act, to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital

stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be, a uniform system of accounts, and the manner in which such accounts shall be kept.

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the Commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the Commission it shall be subject to the forfeitures last above provided.

"Said forfeitures shall be covered in the manner pro-

vided for the recovery of forfeitures under the provisions of this Act.

“The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

“The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

“In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustees shall forfeit to the United States the sum of five hundred dollars for each such offense, and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

“Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars, or imprisonment for a term

not less than one year nor more than three years, or both such fine and imprisonment.

“Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

“That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to Regulate Commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

“And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

“That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

“That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such prop-

erty, as may be evidenced by any receipt, judgment, or transcript thereof."

Sec. 8. That a new section be added to said Act at the end thereof, to be numbered as Section 24, as follows:

"Sec. 24. That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party."

Sec. 9. That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to Regulate Commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

Sec. 10. That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed, but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

Sec. 11. That this Act shall take effect and be in force from and after its passage.

(34 Statutes at Large, 584. C. 3591.)

APPENDIX 6.

Amendment, April 13, 1908.

AN ACT to amend an Act entitled "An Act to amend an Act entitled 'An Act to Regulate Commerce, approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' approved June twenty-ninth, nineteen hundred and six."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph four of section one of the Act entitled "An Act to amend an Act entitled 'An act to Regulate Commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six, be amended so that said paragraph as so amended will read as follows:

"No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation, to inmates of the National Homes or State Homes for disabled Volunteer Soldiers and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge and boards of managers of such Homes; to necessary caretakers of live stock, poultry, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to railway mail service employees, post-office inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to

prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier, and exemployees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed while in the service of such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars and any person other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation, shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three and any amendment thereof." (Approved April 13, 1908.)

35 Statutes at Large, 60. C., 143.

APPENDIX 7.

Amendment, February 25, 1909.

The Amendment of February 25, 1909, supplements Section 20 of the Act to include the following.

"That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved."

APPENDIX 8.

Act of June 18, 1910.

AN ACT to create a commerce court, and to amend the Act entitled "An Act to Regulate Commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a court of the United States is hereby created which shall be known as the commerce court and shall have the jurisdiction now possessed by circuit courts of the United States and the judges thereof over all cases of the following kinds:

First. All cases for the enforcement, otherwise than by adjudication and collection of a forfeiture or penalty or by infliction of criminal punishment, of any order of the Interstate Commerce Commission other than for the payment of money.

Second. Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission.

Third. Such cases as by section three of the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, are authorized to be maintained in a circuit court of the United States.

Fourth. All such mandamus proceedings as under the provisions of section twenty or section twenty-three of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as amended, are authorized to be maintained in a circuit court of the United States.

Nothing contained in this Act shall be construed as enlarging the jurisdiction now possessed by the circuit courts of the United States or the judges thereof, that is hereby transferred to and vested in the commerce court.

The jurisdiction of the commerce court over cases of the foregoing classes shall be exclusive; but this Act shall not affect the jurisdiction now possessed by any circuit or district court of the United States over cases or proceedings of a kind not within the above-enumerated classes.

The commerce court shall be a court of record, and shall have a seal of such form and style as the court may prescribe. The said court shall be composed of five judges, to be from time to time designated and assigned thereto by the Chief Justice of the United States, from among the circuit judges

of the United States, for the period of five years, except that in the first instance the court shall be composed of the five additional circuit judges to be appointed as hereinafter provided, who shall be designated by the President to serve for one, two, three, four, and five years, respectively, in order that the period of designation of one of the said judges shall expire in each year thereafter. In case of the death, resignation, or termination of assignment of any judge so designated, the Chief Justice shall designate a circuit judge to fill the vacancy so caused and to serve during the unexpired period for which the original designation was made. After the year nineteen hundred and fourteen no circuit judge shall be redesignated to serve in the commerce court until the expiration of at least one year after the expiration of the period of his last previous designation. The judge first designated for the five-year period shall be the presiding judge of said court, and thereafter the judge senior in designation shall be the presiding judge.

Each of the judges during the period of his service in the commerce court shall, on account of the regular sessions of the court being held in the city of Washington, receive in addition to his salary as circuit judge an expense allowance at the rate of one thousand five hundred dollars per annum.

The President shall, by and with the advice and consent of the Senate, appoint five additional circuit judges no two of whom shall be from the same judicial circuit, who shall hold office during good behavior and who shall be from time to time designated and assigned by the Chief Justice of the United States for service in the circuit court of any district, or the circuit court of appeals for any circuit, or in the commerce court.

The associate judges shall have precedence and shall succeed to the place and powers of the presiding judge whenever he may be absent or incapable of acting in the order of the date of their designations. Four of said judges shall constitute a quorum, and at least a majority of the court shall concur in all decisions.

The court shall also have a clerk and a marshal, with the same duties and powers, so far as they may be appropriate and are not altered by rule of the court, as are now possessed by the clerk and marshal, respectively, of the Supreme Court of the United States. The offices of the clerk and marshal of the court shall be in the city of Washington, in the District of Columbia. The judges of the court shall appoint the clerk and marshal, and may also appoint, if they find it necessary, a deputy clerk and deputy marshal; and such clerk, marshal,

deputy clerk, and deputy marshal shall hold office during the pleasure of the court. The salary of the clerk shall be four thousand dollars per annum; the salary of the marshal three thousand dollars per annum; the salary of the deputy clerk two thousand five hundred dollars per annum; and the salary of the deputy marshal two thousand five hundred dollars per annum. The said clerk and marshal may, with the approval of the court, employ all requisite assistance. The costs and fees in said court shall be established by the court in a table thereof, approved by the Supreme Court of the United States, within four months after the organization of the court; but such costs and fees shall in no case exceed those charged in the Supreme Court of the United States, and shall be accounted for and paid into the Treasury of the United States.

The commerce court shall be always open for the transaction of business. Its regular sessions shall be held in the city of Washington, in the District of Columbia; but the powers of the court or of any judge thereof, or of the clerk, marshal, deputy clerk, or deputy marshal may be exercised anywhere in the United States; and for expedition of the work of the court and the avoidance of undue expense or inconvenience to suitors the court shall hold sessions in different parts of the United States as may be found desirable. The actual and necessary expenses of the judges, clerk, marshal, deputy clerk, and deputy marshal of the court incurred for travel and attendance elsewhere than in the city of Washington shall be paid upon the written and itemized certificate of such judge, clerk, marshal, deputy clerk, or deputy marshal by the marshal of the court, and shall be allowed to him in the statement of his accounts with the United States.

The United States marshals of the several districts outside of the city of Washington in which the commerce court may hold its sessions shall provide, under the direction and with the approval of the Attorney-General of the United States, such rooms in the public buildings of the United States as may be necessary for the court's use; but in case proper rooms cannot be provided in such public buildings, said marshals, with the approval of the Attorney-General of the United States, may then lease from time to time other necessary rooms for the court.

If, at any time, the business of the commerce court does not require the services of all the judges, the Chief Justice of the United States may, by writing, signed by him and filed in the Department of Justice, terminate the assignment of any of the judges or temporarily assign him for service in any circuit

court or circuit court of appeals. In case of illness or other disability of any judge assigned to the commerce court the Chief Justice of the United States may assign any other circuit judge of the United States to act in his place, and may terminate such assignment when the exigence therefor shall cease; and any circuit judge so assigned to act in place of such judge shall, during his assignment, exercise all the powers and perform all the functions of such judge.

In all cases within its jurisdiction the commerce court, and each of the judges assigned thereto, shall, respectively, have and may exercise any and all of the powers of a circuit court of the United States and of the judges of said court, respectively, so far as the same may be appropriate to the effective exercise of the jurisdiction hereby conferred. The commerce court may issue all writs and process appropriate to the full exercise of its jurisdiction and powers and may prescribe the form thereof. It may also, from time to time, establish such rules and regulations concerning pleading, practice, or procedure in cases or matters within its jurisdiction as to the court shall seem wise and proper. Its orders, writs and process may run, be served, and be returnable anywhere in the United States; and the marshal and deputy marshal of said court and also the United States marshals and deputy marshals in the several districts of the United States shall have like powers and be under like duies to act for and in behalf of said court as pertain to United States marshals and deputy marshals generally when acting under like conditions concerning suits or matters in the circuits of the United States.

The jurisdiction of the commerce court shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the commerce court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said petition in the office of the Secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and ob-

jections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court; and may prescribe that the evidence be taken before a single judge of the court, with power to rule upon the admission of evidence. Except as may be otherwise provided in this Act, or by rule of the court, the practice and procedure in the commerce court shall conform as nearly as may be to that in like cases in a circuit court of the United States.

The commerce court shall be opened for the transaction of business at a date to be fixed by order of the said court, which shall be not later than thirty days after the judges thereof shall have been designated.

Sec. 2. That a final judgment or decree of the commerce court may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of said final judgment or decree. Such appeal may be taken in like manner as appeals from a circuit court of the United States to the Supreme Court, and the commerce court may direct the original record to be transmitted on appeal instead of a transcript thereof. The Supreme Court may affirm, reverse, or modify the final judgment or decree of the commerce court as the case may require.

Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the commerce court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require.

An appeal may also be taken to the Supreme Court of the United States from an interlocutory order or decree of the commerce court granting or continuing an injunction restraining the enforcement of an order of the Interstate Commerce Commission, provided such appeal be taken within thirty days from the entry of such order or decree.

Appeals to the Supreme Court under this section shall have priority in hearing and determination over all other causes except criminal causes in that court.

Sec. 3. That suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the commerce court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the commerce court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. No order or injunction so restraining or suspending an order of the Interstate Commerce Commission shall be made by the commerce court otherwise than upon notice and after hearing, except that in cases where irreparable damage would otherwise ensue to the petitioner, said court, or a judge thereof may, on hearing after not less than three days' notice to the Interstate Commerce Commission and the Attorney-General, allow a temporary stay or suspension in whole or in part of the operation of the order of the Interstate Commerce Commission for not more than sixty days from the date of the order of such court or judge, pending application to the court for its order or injunction, in which case the said order shall contain a specific finding, based upon evidence submitted to the judge making the order and identified by reference thereto, that such irreparable damage would result to the petitioner and specifying the nature of the damage. The court may, at the time of hearing such application, upon a like finding, continue the temporary stay or suspension in whole or in part until its decision upon the application.

Sec. 4. That all cases and proceedings in the commerce court which but for this Act would be brought by or against the Interstate Commerce Commission shall be brought by or against the United States, and the United States may intervene in any case or proceeding in the commerce court whenever, though it has not been made a party, public interests are involved.

Sec. 5. That the Attorney-General shall have charge and control of the interests of the Government in all cases and proceedings in the commerce court, and in the Supreme Court of the United States upon appeal from the commerce court; and if in his opinion the public interest requires it, he may retain and employ in the name of the United States, within the appropriations from time to time made by the Congress for such purposes, such special attorneys and counselors at law as he may think necessary to assist in the discharge of any of the duties incumbent upon him and his subordinate attorneys; and the Attorney-General shall stipulate with such special attorneys and counsel the amount of their compensa-

tion, which shall not be in excess of the sums appropriated therefor by Congress for such purposes, and shall have supervision of their action: *Provided*, That the Interstate Commerce Commission and any party or parties in interest to the proceeding before the commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement or any part thereof, and the interest of such party; and the court wherein is pending such suit may make all such rules and orders as to such appearances and representations, the number of counsel, and all matters of procedure, and otherwise, as to subserve the ends of justice and speed the determination of such suits: *Provided further*, That communities, associations, corporations, firms, and individuals who are interested in the controversy or question before the Interstate Commerce Commission, or in any suit which may be brought by any one under the terms of this Act, or the Acts of which it is amendatory or which are amendatory of it, relating to action of the Interstate Commerce Commission, may intervene in said suit or proceedings at any time after the institution thereof, and the Attorney-General shall not dispose of or discontinue said suit or proceeding over the objection of such party or intervenor aforesaid, but said intervenor or intervenors may prosecute, defend, or continue said suit or proceeding unaffected by the action or nonaction of the Attorney-General of the United States therein.

Complainants before the Interstate Commerce Commission interested in a case shall have the right to appear and be made parties to the case and be represented before the courts by counsel under such regulations as are now permitted in similar circumstances under the rules and practice of equity courts of the United States.

Sec. 6. That until the opening of the commerce court as in section one hereof provided, all cases and proceedings of which from that time the commerce court is hereby given exclusive jurisdiction may be brought in the same courts and conducted in like manner and with like effect as is now provided by law; and if any such case or proceeding shall have gone to final judgment or decree before the opening of the commerce court, appeal may be taken from such final judgment or decree in like manner and with like effect as is now provided by law. Any such case or proceeding within the jurisdiction of the commerce court which may have been begun in any other court as hereby allowed before the said date shall be forthwith trans-

ferred to the commerce court, if it has not yet proceeded to final judgment or decree in such other court unless it has been finally submitted for the decision of such court, in which case the cause shall proceed in such court to final judgment or decree and further proceeding thereafter, and appeal may be taken direct to the Supreme Court, and if remanded such cause may be sent back to the court from which the appeal was taken or to the commerce court for further proceeding as the Supreme Court shall direct; and all previous proceedings in such transferred case shall stand and operate notwithstanding the transfer, subject to the same control over them by the commerce court and to the same right of subsequent action in the case or proceeding as if the transferred case or proceeding had been originally begun in the commerce court. The clerk of the court from which any case or proceeding is so transferred to the commerce court shall transmit to and file in the commerce court the originals of all papers filed in such case or proceeding and a certified transcript of all record entries in the case or proceeding up to the time of transfer.

It shall be the duty of every common carrier subject to the provisions of this Act, within sixty days after the taking effect of this Act, to designate in writing an agent in the city of Washington, District of Columbia, upon whom service of all notices and processes may be made for and on behalf of said common carrier in any proceeding or suit pending before the Interstate Commerce Commission or before said commerce court, and to file such designation in the office of the secretary of the Interstate Commerce Commission, which designation may from time to time be changed by like writing similarly filed; and thereupon service of all notices and processes may be made upon such common carrier by leaving a copy thereof with such designated agent at his office or usual place of residence in the city of Washington, with like effect as if made personally upon such common carrier, and in default of such designation of such agent, service of any notice or other process in any proceeding before said Interstate Commerce Commission or commerce court may be made by posting such notice or process in the office of the secretary of the Interstate Commerce Commission.

Sec. 7. That section one of the Act entitled "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, as heretofore amended, is hereby now amended so as to read as follows:

"Section 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the trans-

portation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States, to any other State, Territory, or District of the United States, or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia, to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

“The term ‘common carrier’ as used in this Act shall include express companies and sleeping car companies. The term ‘railroad’ as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary

in the transportation or delivery of any of said property; and the term 'transportation' shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

"All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: *Provided*, That messages by telegraph, telephone, or cable, subject to the provisions of this Act, may be classified into day, night, repeated, unrepeated, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: *And provided further*, That nothing in this Act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers, for the exchange of services.

"And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions

of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the States and with foreign countries is prohibited and declared to be unlawful.

"No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary caretakers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, or other calamitous visitation; *And provided further*, That this provision shall not be construed to prohibit the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this Act: *Provided further*, That the term 'employees' as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of

a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term 'families' as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood, and minor children during minority of persons who died, while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled 'An Act to further regulate commerce with foreign nations and among the States,' approved February nineteenth, nineteen hundred and three, and any amendment thereof.

"From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

"Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to connect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper

or owner of such lateral, branch line of railroad may make complaint to the commission, as provided in section thirteen of this Act, and the commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as herein-after provided for the enforcement of all other orders by the commission, other than orders for the payment of money."

Sec. 8. That section four of said Act to regulate commerce be amended so as to read as follows:

"Sec. 4. That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided further,* That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the commission, in accordance with the provisions of this section, until a determination of such application by the commission.

"Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such

proposed increase rests upon changed conditions other than the elimination of water competition."

Sec. 9. That section six of said Act to regulate commerce, as heretofore amended, is hereby now amended by adding four new paragraphs at the end thereof, as follows:

"The commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the commission shall be void and its use shall be unlawful.

"In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"If any common carrier subject to the provisions of this Act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through entering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"It shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in

substantially the following form: 'The Station Agent of the _____ Company at _____ Station,' together with the name of the proper post-office, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any post-office.'

Sec. 10. That section ten of said Act to regulate commerce, as heretofore amended, be now amended so as to read as follows:

"Sec. 10. That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

"Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misde-

meanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

“Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

“If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other

thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom."

Sec. 11. That section thirteen of said Act to regulate commerce be amended so as to read as follows:

"Sec. 13. That any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

"Said commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State

or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act, including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant."

Sec. 12. That section fifteen of said Act to regulate commerce as heretofore amended, is hereby now amended so as to read as follows:

"Sec. 15. That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or after full hearing under an order for investigation and hearing made by the commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint classification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for

such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. All orders of the commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the commission, unless the same shall be suspended or modified or set aside by the commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof the commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

“Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice goes into effect, the commission may make such order in reference to such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Com-

merce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this Act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

“The commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

“And in establishing such through route, the commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith, which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

“In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transportation subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided to which through routes and through rates such carrier is a party, the person,

firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

"It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided,* That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

"Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

"If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the commission may, after hearing on a complaint or on its own initiative, determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

"The foregoing enumeration of powers shall not exclude any power which the commission would otherwise have in the making of an order under the provisions of this Act."

Sec. 13. That section sixteen of said Act to regulate commerce, as heretofore amended, is hereby now amended so as to read as follows:

"Sec. 16. That if, after hearing on a complaint made as provided in section thirteen of this Act, the commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

"If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and order of the commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any

subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or state court within one year from the date of the order, and not after.

"In such suits all parties in whose favor the commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs, against the defendant found to be liable to such plaintiff.

"Every order of the commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

"The commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

"It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

"Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

"The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States, brought in the district where the carrier has its principal operating

office, or in any district through which the road of the carrier runs.

"It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

"The commission may employ such attorneys as it finds necessary for proper legal aid and service of the commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the commission's own instance or upon complaint, or to appear for and represent the commission in any case pending in the commerce court; and the expenses of such employment shall be paid out of the appropriation for the commission.

"If any carrier fails or neglects to obey any order of the commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney-General, may apply to the commerce court for the enforcement of such order. If, after hearing, that court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

"The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the commission's seal, shall be received in evidence with like effect as the originals."

Sec. 14. That section twenty of said Act to regulate com-

merce, as heretofore amended, is hereby amended by striking out the following paragraph:

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, and shall be made out under oath and filed with the commission, at its office in Washington, on or before the thirtieth day of September then next following, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such parties shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority to require said carriers to file monthly reports of earnings and expenses or special reports within a specified period, and if any such carrier shall fail to file such reports within the time fixed by the commission it shall be subject to the forfeitures last above provided;"

And by inserting in lieu of the paragraph so stricken out the following:

"Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and ex-

penses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the commission, it shall be subject to the forfeitures last above provided."

Sec. 15. That nothing in this Act contained shall undo or impair any proceedings heretofore taken by or before the Interstate Commerce Commission or any of the Acts of said commission; and in any cases, proceedings, or matters now pending before it, the commission may exercise any of the powers hereby conferred upon it, as would be proper in cases, proceedings, or matters hereafter initiated; and nothing in this Act contained shall operate to release or affect any obligation, liability, penalty, or forfeiture heretofore existing against or incurred by any person, corporation, or association.

Sec. 16. That the President is hereby authorized to appoint a commission to investigate questions pertaining to the issuance of stocks and bonds by railroad corporations, subject to the provisions of the Act to regulate commerce, and the power of Congress to regulate or affect the same, and to fix the compensation of the members of such commission. Said commission shall be and is hereby authorized to employ experts to aid in the work of inquiry and examination, and such clerks, stenographers, and other assistants as may be necessary, which employees shall be paid such compensation as the commission may deem just and reasonable upon a certificate to be issued by the chairman of the commission. The several departments and bureaus of the Government shall detail from time to time such officials and employees and furnish such information to the commission as may be directed by the President. For the purposes of its investigations the commission shall be authorized to incur and have paid upon the certificate of its chairman such expenses as the commission shall deem necessary: *Provided, however,* That the total expenses authorized or incurred under the provisions of this section for compensation, employees, or otherwise, shall not exceed the sum of twenty-five thousand dollars.

Sec. 17. That no interlocutory injunction suspending or restraining the enforcement, operation, or execution of any statute of a State by restraining the action of any officer of such State in the enforcement or execution of such statute shall be

issued or granted by any justice of the supreme court, or by any circuit court of the United States, or by any judge thereof, or by any district judge acting as circuit judge, upon the ground of the unconstitutionality of such statute, unless the application for the same shall be presented to a justice of the Supreme Court of the United States, or to a circuit judge, or to a district judge acting as circuit judge, and shall be heard and determined by three judges, of whom at least one shall be a justice of the Supreme Court of the United States or a circuit judge, and the other two may be either circuit or district judges, and unless a majority of said three judges shall concur in granting such application. Whenever such application as aforesaid is presented to a justice of the Supreme Court of the United States, or to a judge, he shall immediately call to his assistance to hear and determine the application two other judges: *Provided, however,* That one of such three judges shall be a justice of the Supreme Court of the United States or a circuit judge. Said application shall not be heard or determined before at least five days' notice of the hearing has been given to the governor and to the attorney-general of the State, and to such other persons as may be defendants in the suit: *Provided,* That if of opinion that irreparable loss or damage would result to the complainant unless a temporary restraining order is granted, any justice of the Supreme Court of the United States, or any circuit or district judge, may grant such temporary restraining order at any time before such hearing and determination of the application for an interlocutory injunction, but such temporary restraining order shall only remain in force until the hearing and determination of the application for an interlocutory injunction upon notice as aforesaid. The hearing upon such application for an interlocutory injunction shall be given precedence and shall be in every way expedited and be assigned for a hearing at the earliest practicable day after the expiration of the notice hereinbefore provided for. An appeal may be taken directly to the Supreme Court of the United States from the order granting or denying, after notice and hearing, an interlocutory injunction in such case.

Sec. 18. That this Act shall take effect and be in force from and after the expiration of sixty days after its passage, except as to sections twelve and sixteen, which sections shall take effect and be in force immediately.

Approved, June 18, 1910.

[Public—No. 218.]

[H. R. 17536.]

APPENDIX 9.

The Act to Regulate Commerce as Amended to Date.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Sec. 1. (*As amended June 29, 1906, April 13, 1908, and June 18, 1910.*) That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, and to telegraph, telephone, and cable companies (whether wire or wireless) engaged in sending messages from one State, Territory, or District of the United States to any other State, Territory, or District of the United States or to any foreign country, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid, nor shall they apply to the transmission of messages by telephone, telegraph, or cable wholly within one State and not transmitted to or from a foreign country from or to any State or Territory as aforesaid.

The term "common carrier" as used in this Act shall include express companies and sleeping car companies. The term

"railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease, and shall also include all switches, spurs, tracks, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, and also all freight depots, yards, and grounds used or necessary in the transportation or delivery of any of said property; and the term "transportation" shall include cars and other vehicles and all instrumentalities and facilities of shipment or carriage, irrespective of ownership or of any contract, express or implied, for the use thereof and all services in connection with the receipt, delivery, elevation, and transfer in transit, ventilation, refrigeration or icing, storage, and handling of property transported; and it shall be the duty of every carrier subject to the provisions of this Act to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates applicable thereto; and to provide reasonable facilities for operating such through routes and to make reasonable rules and regulations with respect to the exchange, interchange, and return of cars used therein, and for the operation of such through routes, and providing for reasonable compensation to those entitled thereto.

All charges made for any service rendered or to be rendered in the transportation of passengers or property and for the transmission of messages by telegraph, telephone, or cable, as aforesaid, or in connection therewith, shall be just and reasonable; and every unjust and unreasonable charge for such service or any part thereof is prohibited and declared to be unlawful: *Provided*, That messages by telegraph, telephone, or cable, subject to the provisions of this Act, may be classified into day, night, repeated, unrepeatd, letter, commercial, press, Government, and such other classes as are just and reasonable, and different rates may be charged for the different classes of messages: *And provided further*, That nothing in this Act shall be construed to prevent telephone, telegraph, and cable companies from entering into contracts with common carriers for the exchange of services.

And it is hereby made the duty of all common carriers subject to the provisions of this Act to establish, observe, and enforce just and reasonable classifications of property for transportation, with reference to which rates, tariffs, regulations, or practices are or may be made or prescribed, and just

and reasonable regulations and practices affecting classifications, rates, or tariffs, the issuance, form, and substance of tickets, receipts, and bills of lading, the manner and method of presenting, marking, packing, and delivering property for transportation, the facilities for transportation, the carrying of personal, sample, and excess baggage, and all other matters relating to or connected with the receiving, handling, transporting, storing, and delivery of property subject to the provisions of this Act which may be necessary or proper to secure the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act upon just and reasonable terms, and every such unjust and unreasonable classification, regulation, and practice with reference to commerce between the States and with foreign countries is prohibited and declared to be unlawful.

No common carrier subject to the provisions of this Act shall, after January first, nineteen hundred and seven, directly or indirectly, issue or give any interstate free ticket, free pass, or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians, and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work; to indigent, destitute, and homeless persons, and to such persons when transported by charitable societies or hospitals, and the necessary agents employed in such transportation; to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Homes, including those about to enter and those returning home after discharge; to necessary care takers of live stock, poultry, milk, and fruit; to employees on sleeping cars, express cars, and to linemen of telegraph and telephone companies; to Railway Mail Service employees, postoffice inspectors, customs inspectors, and immigration inspectors; to newsboys on trains, baggage agents, witnesses attending any legal investigation in which the common carrier is interested, persons injured in wrecks and physicians and nurses attending such persons: *Provided*, That this provision shall not be construed to prohibit the interchange of passes for the officers, agents, and employees of common carriers, and their families; nor to prohibit any common carrier from carrying passengers free with the object of providing relief in cases of general epidemic, pestilence, or other calamitous visitation: *And provided further*, That this provision shall not be construed to prohibit

the privilege of passes or franks, or the exchange thereof with each other, for the officers, agents, employees, and their families of such telegraph, telephone, and cable lines, and the officers, agents, employees and their families of other common carriers subject to the provisions of this Act: *Provided further*, That the term "employees" as used in this paragraph shall include furloughed, pensioned, and superannuated employees, persons who have become disabled or infirm in the service of any such common carrier, and the remains of a person killed in the employment of a carrier and ex-employees traveling for the purpose of entering the service of any such common carrier; and the term "families" as used in this paragraph shall include the families of those persons named in this proviso, also the families of persons killed, and the widows during widowhood and minor children during minority of persons who died while in the service of any such common carrier. Any common carrier violating this provision shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not less than one hundred dollars nor more than two thousand dollars, and any person, other than the persons excepted in this provision, who uses any such interstate free ticket, free pass, or free transportation shall be subject to a like penalty. Jurisdiction of offenses under this provision shall be the same as that provided for offenses in an Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and any amendment thereof. (*See Section 22.*)

From and after May first, nineteen hundred and eight, it shall be unlawful for any railroad company to transport from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, any article or commodity, other than timber and the manufactured products thereof, manufactured, mined, or produced by it, or under its authority, or which it may own in whole or in part, or in which it may have any interest, direct or indirect, except such articles or commodities as may be necessary and intended for its use in the conduct of its business as a common carrier.

Any common carrier subject to the provisions of this Act, upon application of any lateral, branch line of railroad, or of any shipper tendering interstate traffic for transportation, shall construct, maintain, and operate upon reasonable terms a switch connection with any such lateral, branch line of railroad, or private side track which may be constructed to con-

nect with its railroad, where such connection is reasonably practicable and can be put in with safety and will furnish sufficient business to justify the construction and maintenance of the same; and shall furnish cars for the movement of such traffic to the best of its ability without discrimination in favor of or against any such shipper. If any common carrier shall fail to install and operate any such switch or connection as aforesaid, on application therefor in writing by any shipper or owner of such lateral, branch line of railroad, such shipper or owner of such lateral, branch line of railroad may make complaint to the Commission, as provided in section thirteen of this Act, and the Commission shall hear and investigate the same and shall determine as to the safety and practicability thereof and justification and reasonable compensation therefor, and the Commission may make an order, as provided in section fifteen of this Act, directing the common carrier to comply with the provisions of this section in accordance with such order, and such order shall be enforced as hereinafter provided for the enforcement of all other orders by the Commission, other than orders for the payment of money.

Sec. 2. That if any common carrier subject to the provisions of this Act shall, directly or indirectly, by any special rate, rebate, drawback, or other device, charge, demand, collect, or receive from any person or persons a greater or less compensation for any service rendered, or to be rendered, in the transportation of passengers or property, subject to the provisions of this act, than it charges, demands, collects, or receives from any other person or persons for doing for him or them a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions, such common carrier shall be deemed guilty of unjust discrimination, which is hereby prohibited and declared to be unlawful.

Sec. 3. That it shall be unlawful for any common carrier subject to the provisions of this act to make or give any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality, or any particular description of traffic, in any respect whatsoever, or to subject any particular person, company, firm, corporation, or locality, or any particular description of traffic, to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

Every common carrier subject to the provisions of this Act shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic

between their respective lines, and for the receiving, forwarding, and delivering of passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines; but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business.

Sec. 4. (*As amended June 18, 1910.*) That it shall be unlawful for any common carrier subject to the provisions of this Act to charge or receive any greater compensation in the aggregate for the transportation of passengers, or of like kind of property, for a shorter than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as a through route than the aggregate of the intermediate rates subject to the provisions of this Act; but this shall not be construed as authorizing any common carrier within the terms of this Act to charge or receive as great compensation for a shorter as for a longer distance: *Provided, however,* That upon application to the Interstate Commerce Commission such common carrier may in special cases, after investigation, be authorized by the Commission to charge less for longer than for shorter distances for the transportation of passengers or property; and the Commission may from time to time prescribe the extent to which such designated common carrier may be relieved from the operation of this section: *Provided further,* That no rates or charges lawfully existing at the time of the passage of this amendatory Act shall be required to be changed by reason of the provisions of this section prior to the expiration of six months after the passage of this Act, nor in any case where application shall have been filed before the Commission, in accordance with the provisions of this section, until a determination of such application by the Commission.

Whenever a carrier by railroad shall in competition with a water route or routes reduce the rates on the carriage of any species of freight to or from competitive points, it shall not be permitted to increase such rates unless after hearing by the Interstate Commerce Commission it shall be found that such proposed increase rests upon changed conditions other than the elimination of water competition.

Sec. 5. That it shall be unlawful for any common carrier subject to the provisions of this Act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and com-

peting railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense.

Sec. 6. (*Amended March 2, 1889. Following section substituted June 29, 1906. Amended June 18, 1910.*) That every common carrier subject to the provisions of this Act shall file with the Commission created by this Act and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier by railroad, by pipe line, or by water when a through route and joint rate have been established. If no joint rate over the through route has been established, the several carriers in such through route shall file, print, and keep open to public inspection, as aforesaid, the separately established rates, fares and charges applied to the through transportation. The schedules printed as aforesaid by any such common carrier shall plainly state the places between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately all terminal charges, storage charges, icing charges, and all other charges which the Commission may require, all privileges or facilities granted or allowed and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges, or the value of the service rendered to the passenger, shipper, or consignee. Such schedules shall be plainly printed in large type, and copies for the use of the public shall be kept posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, in such form that they shall be accessible to the public and can be conveniently inspected. The provisions of this section shall apply to all traffic, transportation, and facilities defined in this Act.

Any common carrier subject to the provisions of this Act receiving freight in the United States to be carried through a foreign country to any place in the United States shall also in like manner print and keep open to public inspection, at every depot or office where such freight is received for shipment, schedules showing the through rates established and charged by such common carrier to all points in the United States beyond the foreign country to which it accepts freight

for shipment; and any freight shipped from the United States through a foreign country into the United States the through rate on which shall not have been made public, as required by this Act, shall, before it is admitted into the United States from said foreign country, be subject to customs duties as if said freight were of foreign production.

No change shall be made in the rates, fares, and charges or joint rates, fares, and charges which have been filed and published by any common carrier in compliance with the requirements of this section, except after thirty days' notice to the Commission and to the public published as aforesaid, which shall plainly state the changes proposed to be made in the schedule then in force and the time when the changed rates, fares, or charges will go into effect; and the proposed changes shall be shown by printing new schedules, or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Commission may, in its discretion and for good cause shown, allow changes upon less than the notice herein specified, or modify the requirements of this section in respect to publishing, posting and filing of tariffs, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

The names of the several carriers which are parties to any joint tariff shall be specified therein, and each of the parties thereto, other than the one filing the same, shall file with the Commission such evidence of concurrence therein or acceptance thereof as may be required or approved by the Commission, and where such evidence of concurrence or acceptance is filed it shall not be necessary for the carriers filing the same to also file copies of the tariffs in which they are named as parties.

Every common carrier subject to this Act shall also file with said Commission copies of all contracts, agreements, or arrangements with other common carriers in relation to any traffic affected by the provisions of this Act to which it may be a party.

The Commission may determine and prescribe the form in which the schedules required by this section to be kept open to public inspection shall be prepared and arranged and may change the form from time to time as shall be found expedient.

No carrier, unless otherwise provided by this Act, shall engage or participate in the transportation of passengers or property, as defined in this Act, unless the rates, fares, and charges upon which the same are transported by said carrier have been

filed and published in accordance with the provisions of this Act; nor shall any carrier charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or property, or for any service in connection therewith, between the points named in such tariffs than the rates, fares, and charges which are specified in the tariff filed and in effect at the time; nor shall any carrier refund or remit in any manner or by any device any portion of the rates, fares, and charges so specified, nor extend to any shipper or person any privileges or facilities in the transportation of passengers or property except such as are specified in such tariffs: *Provided*, That wherever the word "carrier" occurs in this Act it shall be held to mean "common carrier."

That in time of war or threatened war preference and precedence shall, upon the demand of the President of the United States, be given, over all other traffic, to the transportation of troops and material of war, and carriers shall adopt every means within their control to facilitate and expedite the military traffic.

The Commission may reject and refuse to file any schedule that is tendered for filing which does not provide and give lawful notice of its effective date, and any schedule so rejected by the Commission shall be void and its use shall be unlawful.

In case of failure or refusal on the part of any carrier, receiver, or trustee to comply with the terms of any regulation adopted and promulgated or any order made by the Commission under the provisions of this section, such carrier, receiver, or trustee shall be liable to a penalty of five hundred dollars for each such offense, and twenty-five dollars for each and every day of the continuance of such offense, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

If any common carrier subject to the provisions of this Act, after written request made upon the agent of such carrier hereinafter in this section referred to, by any person or company for a written statement of the rate or charge applicable to a described shipment between stated places under the schedules or tariffs to which such carrier is a party, shall refuse or omit to give such written statement within a reasonable time, or shall misstate in writing the applicable rate, and if the person or company making such request suffers damage in consequence of such refusal or omission or in consequence of the misstatement of the rate, either through making the shipment over a line or route for which the proper rate is higher than the rate over another available line or route, or through en-

tering into any sale or other contract whereunder such person or company obligates himself or itself to make such shipment of freight at his or its cost, then the said carrier shall be liable to a penalty of two hundred and fifty dollars, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

It shall be the duty of every carrier by railroad to keep at all times conspicuously posted in every station where freight is received for transportation the name of an agent resident in the city, village, or town where such station is located, to whom application may be made for the information by this section required to be furnished on written request; and in case any carrier shall fail at any time to have such name so posted in any station, it shall be sufficient to address such request in substantially the following form: "The Station Agent of the _____ Company at _____ Station," together with the name of the proper postoffice, inserting the name of the carrier company and of the station in the blanks, and to serve the same by depositing the request so addressed, with postage thereon prepaid, in any postoffice.

Sec. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freights from being continuous from the place of shipment to the place of destination; and no break of bulk, stoppage, or interruption made by such common carrier shall prevent the carriage of freights from being and being treated as one continuous carriage from the place of shipment to the place of destination, unless such break, stoppage, or interruption was made in good faith for some necessary purpose, and without any intent to avoid or unnecessarily interrupt such continuous carriage or to evade any of the provisions of this Act.

Sec. 8. That in case any common carrier subject to the provisions of this Act shall do, cause to be done, or permit to be done any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this Act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case.

Sec. 9. That any person or persons claiming to be damaged by any common carrier subject to the provisions of this Act may either make complaint to the Commission as hereinafter provided for, or may bring suit in his or their own behalf for the recovery of the damages for which such common carrier may be liable under the provisions of this Act, in any district or circuit court of the United States of competent jurisdiction; but such person or persons shall not have the right to pursue both of said remedies, and must in each case elect which one of the two methods of procedure herein provided for he or they will adopt. In any such action brought for the recovery of damages, the court before which the same shall be pending may compel any director, officer, receiver, trustee, or agent of the corporation or company defendant in such suit to attend, appear, and testify in such case, and may compel the production of the books and papers of such corporation or company party to any such suit; the claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

Sec. 10. (*As amended March 2, 1889, and June 18, 1910.*) That any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall willfully omit or fail to do any act, matter, or thing in this Act required to be done, or shall cause or willingly suffer or permit any act, matter, or thing so directed or required by this Act to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this Act for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed five thousand dollars for each offense: *Provided*, That if the offense for which any person shall be convicted as aforesaid shall be an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property, such person shall, in addition to the fine hereinbe-

fore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court.

Any common carrier subject to the provisions of this Act, or, whenever such common carrier is a corporation, any officer or agent thereof, or any person acting for or employed by such corporation, who, by means of false billing, false classification, false weighing, or false report of weight, or by any other device or means, shall knowingly and willfully assist, or shall willingly suffer or permit, any person or persons to obtain transportation for property at less than the regular rates then established and in force on the line of transportation of such common carrier, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense.

Any person, corporation, or company, or any agent or officer thereof, who shall deliver property for transportation to any common carrier subject to the provisions of this Act, or for whom, as consignor or consignee, any such carrier shall transport property, who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false billing, false classification, false weighing, false representation of the contents of the package or the substance of the property, false report of weight, false statement, or by any other device or means, whether with or without the consent or connivance of the carrier, its agent, or officer, obtain or attempt to obtain transportation for such property at less than the regular rates then established and in force on the line of transportation; or who shall knowingly and willfully, directly or indirectly, himself or by employee, agent, officer, or otherwise, by false statement or representation as to cost, value, nature, or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement or entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or

after payment, shall in fact be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud, which is hereby declared to be a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction, within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding five thousand dollars or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided*, That the penalty of imprisonment shall not apply to artificial persons.

If any such person, or any officer or agent of any such corporation or company, shall, by payment of money or other thing of value, solicitation, or otherwise, induce or attempt to induce any common carrier subject to the provisions of this Act, or any of its officers or agents, to discriminate unjustly in his, its, or their favor as against any other consignor or consignee in the transportation of property, or shall aid or abet any common carrier in any such unjust discrimination, such person or such officer or agent of such corporation or company shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any court of the United States of competent jurisdiction within the district in which such offense was committed, be subject to a fine of not exceeding five thousand dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court, for each offense; and such person, corporation, or company shall also, together with said common carrier, be liable, jointly or severally, in an action to be brought by any consignor or consignee discriminated against in any court of the United States of competent jurisdiction for all damages caused by or resulting therefrom.

Sec. 11. That a Commission is hereby created and established to be known as the Interstate Commerce Commission, which shall be composed of five Commissioners, who shall be appointed by the President, by and with the advice and consent of the Senate. The Commissioners first appointed under this Act shall continue in office for the term of two, three, four, five, and six years, respectively, from the first day of January, Anno Domini eighteen hundred and eighty-seven, the term of each to be designated by the President; but their successors shall be appointed for terms of six years, except that any person chosen to fill a vacancy shall be appointed only for the unexpired time of the Commissioner whom he shall succeed. Any Commissioner may be removed by the President for in-

efficiency, neglect of duty, or malfeasance in office. Not more than three of the Commissioners shall be appointed from the same political party. No person in the employ of or holding any official relation to any common carrier subject to the provisions of this act, or owning stock or bonds thereof, or who is in any manner pecuniarily interested therein, shall enter upon the duties of or hold such office. Said Commissioners shall not engage in any other business, vocation, or employment. No vacancy in the Commission shall impair the right of the remaining Commissioners to exercise all the powers of the Commission. (*See section 24, enlarging Commission and increasing salaries.*)

Sec. 12. (*As amended March 2, 1889, and February 10, 1891.*) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this Act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this Act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this Act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this Act the Commission shall have power to require, by subpoena, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpoena the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within

the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpoena issued to any common carrier subject to the provisions of this Act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation pending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it, at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court, or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party, or his attorney, proposing to take such deposition to the opposite party or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

Every person deposing as herein provided shall be cautioned and sworn (or affirm, if he so request) to testify the whole truth, and shall be carefully examined. His testimony shall be reduced to writing by the magistrate taking the deposition, or under his discretion, and shall, after it has been reduced to writing, be subscribed by the deponent.

If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be

taken before an officer or person designated by the Commission, or agreed upon by the parties by stipulation in writing to be filed with the Commission. All depositions must be promptly filed with the Commission.

Witnesses whose depositions are taken pursuant to this Act, and the magistrate or other officer taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

Sec. 13. (*As amended June 18, 1910.*) That any person, firm, corporation, company, or association or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier, complaining of anything done or omitted to be done by any common carrier subject to the provisions of this Act, in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

Said Commission shall, in like manner and with the same authority and powers, investigate any complaint forwarded by the railroad commissioner or railroad commission of any State or Territory at the request of such commissioner or commission, and the Interstate Commerce Commission shall have full authority and power at any time to institute an inquiry, on its own motion, in any case and as to any matter or thing concerning which a complaint is authorized to be made, to or before said Commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act. And the said Commission shall have the same powers and authority to proceed with any inquiry instituted on its own motion as though it had been appealed to by complaint or petition under any of the provisions of this Act,

including the power to make and enforce any order or orders in the case, or relating to the matter or thing concerning which the inquiry is had excepting orders for the payment of money. No complaint shall at any time be dismissed because of the absence of direct damage to the complainant.

Sec. 14. (*Amended March 2, 1889, and June 29, 1906.*) That whenever an investigation shall be made by said Commission, it shall be its duty to make a report in writing in respect thereto, which shall state the conclusions of the Commission, together with its decision, order, or requirement in the premises; and in case damages are awarded such report shall include the findings of fact on which the award is made.

All reports of investigations made by the Commission shall be entered of record, and a copy thereof shall be furnished to the party who may have complained, and to any common carrier that may have been complained of.

The Commission may provide for the publication of its reports and decisions in such form and manner as may be best adapted for public information and use, and such authorized publications shall be competent evidence of the reports and decisions of the Commission therein contained in all courts of the United States and of the several States without any further proof or authentication thereof. The Commission may also cause to be printed for early distribution its annual reports.

Sec. 15. (*As amended June 29, 1906, and June 18, 1910.*) That whenever, after full hearing upon a complaint made as provided in section thirteen of this Act, or after full hearing under an order for investigation and hearing made by the Commission on its own initiative (either in extension of any pending complaint or without any complaint whatever), the Commission shall be of opinion that any individual or joint rates or charges whatsoever demanded, charged, or collected by any common carrier or carriers subject to the provisions of this Act for the transportation of persons or property or for the transmission of messages by telegraph or telephone as defined in the first section of this Act, or that any individual or joint classifications, regulations, or practices whatsoever of such carrier or carriers subject to the provisions of this Act are unjust or unreasonable or unjustly discriminatory, or unduly preferential or prejudicial or otherwise in violation of any of the provisions of this Act, the Commission is hereby authorized and empowered to determine and prescribe what will be the just and reasonable individual or joint rate or rates, charge or charges, to be thereafter observed in such case as the maximum to be charged, and what individual or joint clas-

sification, regulation, or practice is just, fair, and reasonable, to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds the same to exist, and shall not thereafter publish, demand, or collect any rate or charge for such transportation or transmission in excess of the maximum rate or charge so prescribed, and shall adopt the classification and shall conform to and observe the regulation or practice so prescribed. All orders of the Commission, except orders for the payment of money, shall take effect within such reasonable time, not less than thirty days, and shall continue in force for such period of time, not exceeding two years, as shall be prescribed in the order of the Commission, unless the same shall be suspended or modified or set aside by the Commission, or be suspended or set aside by a court of competent jurisdiction. Whenever the carrier or carriers, in obedience to such order of the Commission or otherwise, in respect to joint rates, fares, or charges, shall fail to agree among themselves upon the apportionment or division thereof, the Commission may, after hearing, make a supplemental order prescribing the just and reasonable proportion of such joint rate to be received by each carrier party thereto, which order shall take effect as a part of the original order.

Whenever there shall be filed with the Commission any schedule stating a new individual or joint rate, fare, or charge, or any new individual or joint classification, or any new individual or joint regulation or practice affecting any rate, fare, or charge, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, and if it so orders, without answer or other formal pleading by the interested carrier or carriers, but upon reasonable notice, to enter upon a hearing concerning the propriety of such rate, fare, charge, classification, regulation, or practice; and pending such hearing and the decision thereon the Commission upon filing with such schedule and delivering to the carrier or carriers affected thereby a statement in writing of its reasons for such suspension may suspend the operation of such schedule and defer the use of such rate, fare, charge, classification, regulation, or practice, but not for a longer period than one hundred and twenty days beyond the time when such rate, fare, charge, classification, regulation, or practice would otherwise go into effect; and after full hearing, whether completed before or after the rate, fare, charge, classification, regulation, or practice, goes into effect, the Commission may make such order in reference to

such rate, fare, charge, classification, regulation, or practice as would be proper in a proceeding initiated after the rate, fare, charge, classification, regulation, or practice had become effective: *Provided*, That if any such hearing can not be concluded within the period of suspension, as above stated, the Interstate Commerce Commission may, in its discretion, extend the time of suspension for a further period not exceeding six months. At any hearing involving a rate increased after January first, nineteen hundred and ten, or of a rate sought to be increased after the passage of this Act, the burden of proof to show that the increased rate or proposed increased rate is just and reasonable shall be upon the common carrier, and the Commission shall give to the hearing and decision of such questions preference over all other questions pending before it and decide the same as speedily as possible.

The Commission may also, after hearing, on a complaint or upon its own initiative without complaint, establish through routes and joint classifications, and may establish joint rates as the maximum to be charged and may prescribe the division of such rates as hereinbefore provided and the terms and conditions under which such through routes shall be operated, whenever the carriers themselves shall have refused or neglected to establish voluntarily such through routes or joint classifications or joint rates; and this provision shall apply when one of the connecting carriers is a water line. The Commission shall not, however, establish any through route, classification, or rate between street electric passenger railways not engaged in the general business of transporting freight in addition to their passenger and express business and railroads of a different character, nor shall the Commission have the right to establish any route, classification, rate, fare, or charge when the transportation is wholly by water, and any transportation by water affected by this Act shall be subject to the laws and regulations applicable to transportation by water.

And in establishing such through route, the Commission shall not require any company, without its consent, to embrace in such route substantially less than the entire length of its railroad and of any intermediate railroad operated in conjunction and under a common management or control therewith which lies between the termini of such proposed through route, unless to do so would make such through route unreasonably long as compared with another practicable through route which could otherwise be established.

In all cases where at the time of delivery of property to any railroad corporation being a common carrier, for transporta-

tion subject to the provisions of this Act to any point of destination, between which and the point of such delivery for shipment two or more through routes and through rates shall have been established as in this Act provided to which through routes and through rates such carrier is a party, the person, firm, or corporation making such shipment, subject to such reasonable exceptions and regulations as the Interstate Commerce Commission shall from time to time prescribe, shall have the right to designate in writing by which of such through routes such property shall be transported to destination, and it shall thereupon be the duty of the initial carrier to route said property and issue a through bill of lading therefor as so directed, and to transport said property over its own line or lines and deliver the same to a connecting line or lines according to such through route, and it shall be the duty of each of said connecting carriers to receive said property and transport it over the said line or lines and deliver the same to the next succeeding carrier or consignee according to the routing instructions in said bill of lading: *Provided, however,* That the shipper shall in all instances have the right to determine, where competing lines of railroad constitute portions of a through line or route, over which of said competing lines so constituting a portion of said through line or route his freight shall be transported.

It shall be unlawful for any common carrier subject to the provisions of this Act, or any officer, agent, or employee of such common carrier, or for any other person or corporation lawfully authorized by such common carrier to receive information therefrom, knowingly to disclose to or permit to be acquired by any person or corporation other than the shipper or consignee, without the consent of such shipper or consignee, any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or delivered to such common carrier for interstate transportation, which information may be used to the detriment or prejudice of such shipper or consignee, or which may improperly disclose his business transactions to a competitor; and it shall also be unlawful for any person or corporation to solicit or knowingly receive any such information which may be so used: *Provided,* That nothing in this Act shall be construed to prevent the giving of such information in response to any legal process issued under the authority of any state or federal court, or to any officer or agent of the Government of the United States, or of any State or Territory, in the exercise of his powers, or to any officer or other duly authorized person

seeking such information for the prosecution of persons charged with or suspected of crime; or information given by a common carrier to another carrier or its duly authorized agent, for the purpose of adjusting mutual traffic accounts in the ordinary course of business of such carriers.

Any person, corporation, or association violating any of the provisions of the next preceding paragraph of this section shall be deemed guilty of a misdemeanor, and for each offense, on conviction, shall pay to the United States a penalty of not more than one thousand dollars.

If the owner of property transported under this Act directly or indirectly renders any service connected with such transportation, or furnishes any instrumentality used therein, the charge and allowance therefor shall be no more than is just and reasonable, and the Commission may, after hearing on a complaint or on its own initiative determine what is a reasonable charge as the maximum to be paid by the carrier or carriers for the services so rendered or for the use of the instrumentality so furnished, and fix the same by appropriate order, which order shall have the same force and effect and be enforced in like manner as the orders above provided for under this section.

The foregoing enumeration of powers shall not exclude any power which the Commission would otherwise have in the making of an order under the provisions of this Act.

Sec. 16. (*Amended March 2, 1889, June 29, 1906, and June 18, 1910.*) That if, after hearing on a complaint made as provided in section thirteen of this Act, the Commission shall determine that any party complainant is entitled to an award of damages under the provisions of this Act for a violation thereof, the Commission shall make an order directing the carrier to pay to the complainant the sum to which he is entitled on or before a day named.

If a carrier does not comply with an order for the payment of money within the time limit in such order, the complainant, or any person for whose benefit such order was made, may file in the circuit court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the road of the carrier runs, or in any state court of general jurisdiction having jurisdiction of the parties, a petition setting forth briefly the causes for which he claims damages, and the order of the Commission in the premises. Such suit in the circuit court of the United States shall proceed in all respects like other civil suits for damages, except that on the trial of such suit the findings and

order of the Commission shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the circuit court nor for costs at any subsequent stage of the proceedings unless they accrue upon his appeal. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. All complaints for the recovery of damages shall be filed with the Commission within two years from the time the cause of action accrues, and not after, and a petition for the enforcement of an order for the payment of money shall be filed in the circuit court or state court within one year from the date of the order, and not after.

In such suits all parties in whose favor the Commission may have made an award for damages by a single order may be joined as plaintiffs, and all of the carriers parties to such order awarding such damages may be joined as defendants, and such suit may be maintained by such joint plaintiffs and against such joint defendants in any district where any one of such joint plaintiffs could maintain such suit against any one of such joint defendants; and service of process against any one of such defendants as may not be found in the district where the suit is brought may be made in any district where such defendant carrier has its principal operating office. In case of such joint suit the recovery, if any, may be by judgment in favor of any one of such plaintiffs against the defendant found to be liable for such plaintiff.

Every order of the Commission shall be forthwith served upon the designated agent of the carrier in the city of Washington or in such other manner as may be provided by law.

The Commission shall be authorized to suspend or modify its orders upon such notice and in such manner as it shall deem proper.

It shall be the duty of every common carrier, its agents and employees, to observe and comply with such orders so long as the same shall remain in effect.

Any carrier, any officer, representative, or agent of a carrier, or any receiver, trustee, lessee, or agent of either of them, who knowingly fails or neglects to obey any order made under the provisions of section fifteen of this Act shall forfeit to the United States the sum of five thousand dollars for each offense. Every distinct violation shall be a separate offense, and in case of a continuing violation each day shall be deemed a separate offense.

The forfeiture provided for in this Act shall be payable into the Treasury of the United States, and shall be recoverable in

a civil suit in the name of the United States, brought in the district where the carrier has its principal operating office, or in any district through which the road of the carrier runs.

It shall be the duty of the various district attorneys, under the direction of the Attorney-General of the United States, to prosecute for the recovery of forfeitures. The costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States.

The Commission may employ such attorneys as it finds necessary for proper legal aid and service of the Commission or its members in the conduct of their work or for proper representation of the public interests in investigations made by it or cases or proceedings pending before it, whether at the Commission's own instance or upon complaint, or to appear for and represent the Commission in any case pending in the commerce court; and the expenses of such employment shall be paid out of the appropriation for the Commission.

If any carrier fails or neglects to obey any order of the Commission other than for the payment of money, while the same is in effect, the Interstate Commerce Commission or any party injured thereby, or the United States, by its Attorney-General, may apply to the Commerce Court for the enforcement of such order. If, after hearing, that Court determines that the order was regularly made and duly served, and that the carrier is in disobedience of the same, the Court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such carrier, its officers, agents, or representatives, from further disobedience of such order, or to enjoin upon it or them obedience to the same.

The copies of schedules and classifications and tariffs of rates, fares, and charges, and of all contracts, agreements, and arrangements between common carriers filed with the Commission as herein provided, and the statistics, tables, and figures contained in the annual or other reports of carriers made to the Commission as required under the provisions of this Act shall be preserved as public records in the custody of the secretary of the Commission, and shall be received as prima facie evidence of what they purport to be for the purpose of investigations by the Commission and in all judicial proceedings; and copies of and extracts from any of said schedules, classifications, tariffs, contracts, agreements, arrangements, or reports, made public records as aforesaid, certified by the secretary, under the Commission's seal, shall be received in evidence with like effect as the originals.

Sec. 16a. (*Added June 29, 1906.*) That after a decision, order, or requirement has been made by the Commission in any proceeding any party thereto may at any time make application for rehearing of the same, or any matter determined therein, and it shall be lawful for the Commission in its discretion to grant such a rehearing if sufficient reason therefor be made to appear. Applications for rehearing shall be governed by such general rules as the Commission may establish. No such application shall excuse any carrier from complying with or obeying any decision, order, or requirement of the Commission, or operate in any manner to stay or postpone the enforcement thereof, without the special order of the Commission. In case a rehearing is granted the proceedings thereupon shall conform as nearly as may be to the proceedings in an original hearing, except as the Commission may otherwise direct; and if, in its judgment, after such rehearing and the consideration of all facts, including those arising since the former hearing, it shall appear that the original decision, order, or requirement is in any respect unjust or unwarranted, the Commission may reverse, change, or modify the same accordingly. Any decision, order, or requirement made after such rehearing, reversing, changing, or modifying the original determination shall be subject to the same provisions as an original order.

Sec. 17. (*As amended March 2, 1889.*) That the Commission may conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice. A majority of the Commission shall constitute a quorum for the transaction of business, but no Commissioner shall participate in any hearing or proceeding in which he has any pecuniary interest. Said Commission may, from time to time, make or amend such general rules or orders as may be requisite for the order and regulation of proceedings before it, including forms of notices and the service thereof, which shall conform, as nearly as may be, to those in use in the courts of the United States. Any party may appear before said Commission and be heard in person or by attorney. Every vote and official act of the Commission shall be entered of record, and its proceedings shall be public upon the request of either party interested. Said Commission shall have an official seal, which shall be judicially noticed. Either of the members of the Commission may administer oaths and affirmations and sign subpoenas.

Sec. 18. (*As amended March 2, 1889.*) [*See Section 24, increasing salaries of Commissioners.*] That each Commissioner

shall receive an annual salary of seven thousand five hundred dollars, payable in the same manner as the judges of the courts of the United States. The Commission shall appoint a secretary, who shall receive an annual salary of three thousand five hundred dollars, payable in like manner. The Commission shall have authority to employ and fix the compensation of such other employees as it may find necessary to the proper performance of its duties. Until otherwise provided by law, the Commission may hire suitable offices for its use, and shall have authority to procure all necessary office supplies. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

All of the expenses of the Commission, including all necessary expenses for transportation incurred by the Commissioners, or by their employees under their orders, in making any investigation, or upon official business in any other places than in the city of Washington, shall be allowed and paid on the presentation of itemized vouchers therefor approved by the chairman of the Commission.

Sec. 19. That the principal office of the Commission shall be in the city of Washington, where its general sessions shall be held; but whenever the convenience of the public or the parties may be promoted, or delay or expense prevented thereby, the Commission may hold special sessions in any part of the United States. It may, by one or more of the Commissioners, prosecute any inquiry necessary to its duties, in any part of the United States, into any matter or question of fact pertaining to the business of any common carrier subject to the provisions of this Act.

Sec. 20. (*As amended June 29, 1906, February 25, 1909, and June 18, 1910.*) That the Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this Act, and from the owners of all railroads engaged in interstate commerce as defined in this Act; to prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information. Such annual reports shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the accidents to

passengers, employees, and other persons, and the causes thereof; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts from each branch of business and from all sources; the operating and other expenses; the balances of profit and loss; and a complete exhibit of the financial operations of the carrier each year, including an annual balance sheet. Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts affecting the same as the Commission may require; and the Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this Act, prescribe a period of time within which all common carriers subject to the provisions of this Act shall have, as near as may be a uniform system of accounts, and the manner in which such accounts shall be kept.

Said detailed reports shall contain all the required statistics for the period of twelve months ending on the thirtieth day of June in each year, or on the thirty-first day of December in each year if the Commission by order substitute that period for the year ending June thirtieth, and shall be made out under oath and filed with the Commission at its office in Washington within three months after the close of the year for which the report is made, unless additional time be granted in any case by the Commission; and if any carrier, person, or corporation subject to the provisions of this Act shall fail to make and file said annual reports within the time above specified, or within the time extended by the Commission, for making and filing the same, or shall fail to make specific answer to any question authorized by the provisions of this section within thirty days from the time it is lawfully required so to do, such party shall forfeit to the United States the sum of one hundred dollars for each and every day it shall continue to be in default with respect thereto. The Commission shall also have authority by general or special orders to require said carriers, or any of them, to file monthly reports of earnings and expenses, and to file periodical or special, or both periodical and special, reports concerning any matters about which the Commission is authorized or required by this or any other law to inquire or to keep itself informed or which it is required to enforce; and such periodical or special reports shall be under oath whenever the Commission so requires; and if any such carrier shall fail to make and file any such periodical or special report within the time fixed by the Commission, it shall be subject to the forfeitures last above provided.

Said forfeitures shall be recovered in the manner provided for the recovery of forfeitures under the provisions of this Act.

The oath required by this section may be taken before any person authorized to administer an oath by the laws of the State in which the same is taken.

The Commission may, in its discretion, prescribe the forms of any and all accounts, records, and memoranda to be kept by carriers subject to the provisions of this Act, including the accounts, records, and memoranda of the movement of traffic as well as the receipts and expenditures of moneys. The Commission shall at all times have access to all accounts, records, and memoranda kept by carriers subject to this Act, and it shall be unlawful for such carriers to keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, and it may employ special agents or examiners, who shall have authority under the order of the Commission to inspect and examine any and all accounts, records, and memoranda kept by such carriers. This provision shall apply to receivers of carriers and operating trustees.

In case of failure or refusal on the part of any such carrier, receiver, or trustee to keep such accounts, records, and memoranda on the books and in the manner prescribed by the Commission, or to submit such accounts, records, and memoranda as are kept to the inspection of the Commission or any of its authorized agents or examiners, such carrier, receiver, or trustee shall forfeit to the United States the sum of five hundred dollars for each such offense and for each and every day of the continuance of such offense, such forfeitures to be recoverable in the same manner as other forfeitures provided for in this Act.

Any person who shall willfully make any false entry in the accounts of any book of accounts or in any record or memoranda kept by a carrier, or who shall willfully destroy, mutilate, alter, or by any other means or device falsify the record of any such account, record, or memoranda, or who shall willfully neglect or fail to make full, true, and correct entries in such accounts, records, or memoranda of all facts and transactions appertaining to the carrier's business, or shall keep any other accounts, records, or memoranda than those prescribed or approved by the Commission, shall be deemed guilty of a misdemeanor, and shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not less than one thousand dollars nor more than five thousand dollars or imprisonment for a term not less than one year nor more than three years, or both such fine and imprisonment:

Provided, That the Commission may in its discretion issue orders specifying such operating, accounting, or financial papers, records, books, blanks, tickets, stubs, or documents of carriers which may, after a reasonable time, be destroyed, and prescribing the length of time such books, papers, or documents shall be preserved.

Any examiner who divulges any fact or information which may come to his knowledge during the course of such examination, except in so far as he may be directed by the Commission or by a court or judge thereof, shall be subject, upon conviction in any court of the United States of competent jurisdiction, to a fine of not more than five thousand dollars or imprisonment for a term not exceeding two years, or both.

That the circuit and district courts of the United States shall have jurisdiction, upon the application of the Attorney-General of the United States at the request of the Commission, alleging a failure to comply with or a violation of any of the provisions of said Act to regulate commerce or of any Act supplementary thereto or amendatory thereof by any common carrier, to issue a writ or writs of mandamus commanding such common carrier to comply with the provisions of said Acts, or any of them.

And to carry out and give effect to the provisions of said Acts, or any of them, the Commission is hereby authorized to employ special agents or examiners who shall have power to administer oaths, examine witnesses, and receive evidence.

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or bill of lading therefor and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law.

That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained the amount of such loss, damage, or injury as it may be required to pay to the owners of such property, as

may be evidenced by any receipt, judgment, or transcript thereof.

Sec. 21. (*As amended March 2, 1889.*) That the Commission shall, on or before the first day of December in each year, make a report, which shall be transmitted to Congress, and copies of which shall be distributed as are the other reports transmitted to Congress. This report shall contain such information and data collected by the Commission as may be considered of value in the determination of questions connected with the regulation of commerce, together with such recommendations as to additional legislation relating thereto as the Commission may deem necessary; and the names and compensation of the persons employed by said Commission.

Sec. 22. (*As amended March 2, 1889, and February 8, 1895.*) [*See section 1, 4th par.*] That nothing in this Act shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States, State, or municipal governments, or for charitable purposes, or to or from fairs and expositions for exhibition thereat, or the free carriage of destitute and homeless persons transported by charitable societies, and the necessary agents employed in such transportation, or the issuance of mileage, excursion, or commutation passenger tickets; nothing in this Act shall be construed to prohibit any common carrier from giving reduced rates to ministers of religion, or to municipal governments for the transportation of indigent persons, or to inmates of the National Homes or State Homes for Disabled Volunteer Soldiers, and of Soldiers' and Sailors' Orphan Homes, including those about to enter and those returning home after discharge, under arrangements with the boards of managers of said homes; nothing in this Act shall be construed to prevent railroads from giving free carriage to their own officers and employees, or to prevent the principal officers of any railroad company or companies from exchanging passes or tickets with other railroad companies for their officers and employees; and nothing in this Act contained shall in any way abridge or alter the remedies now existing at common law or by statute, but the provisions of this Act are in addition to such remedies: *Provided*, That no pending litigation shall in any way be affected by this Act: *Provided further*, That nothing in this Act shall prevent the issuance of joint interchangeable five-thousand-mile tickets, with special privileges as to the amount of free baggage that may be carried under mileage tickets of one thousand or more miles. But before any common carrier, subject to the provisions of this Act, shall issue any such joint interchangeable

mileage tickets with special privileges, as aforesaid, it shall file with the Interstate Commerce Commission copies of the joint tariffs of rates, fares, or charges on which such joint interchangeable mileage tickets are to be based, together with specifications of the amount of free baggage permitted to be carried under such tickets, in the same manner as common carriers are required to do with regard to other joint rates by section six of this Act; and all the provisions of said section six relating to joint rates, fares, and charges shall be observed by said common carriers and enforced by the Interstate Commerce Commission as fully with regard to such joint interchangeable mileage tickets as with regard to other joint rates, fares, and charges referred to in said section six. It shall be unlawful for any common carrier that has issued or authorized to be issued any such joint interchangeable mileage tickets to demand, collect, or receive from any person or persons a greater or less compensation for transportation of persons or baggage under such joint interchangeable mileage tickets than that required by the rate, fare, or charge specified in the copies of the joint tariff of rates, fares, or charges filed with the Commission in force at the time. The provisions of section ten of this Act shall apply to any violation of the requirements of this proviso.

Sec. 23. (*Added March 2, 1889.*) That the circuit and district courts of the United States shall have jurisdiction upon the relation of any person or persons, firm, or corporation, alleging such violation by a common carrier, of any of the provisions of the Act to which this is a supplement and all Acts amendatory thereof, as prevents the relator from having interstate traffic moved by said common carrier at the same rates as are charged, or upon terms or conditions as favorable as those given by said common carrier for like traffic under similar conditions to any other shipper, to issue a writ or writs of mandamus against said common carrier, commanding such common carrier to move and transport the traffic, or to furnish cars or other facilities for transportation for the party applying for the writ: *Provided*, That if any question of fact as to the proper compensation to the common carrier for the service to be enforced by the writ is raised by the pleadings, the writ of peremptory mandamus may issue, notwithstanding such question of fact is undetermined, upon such terms as to security, payment of money into the court, or otherwise, as the court may think proper, pending the determination of the question of fact: *Provided*, That the remedy hereby given by writ of mandamus shall be cumulative, and shall not be held

to exclude or interfere with other remedies provided by this Act or the Act to which it is a supplement.

Sec. 24. (*Added June 29, 1906.*) That the Interstate Commerce Commission is hereby enlarged so as to consist of seven members with terms of seven years, and each shall receive ten thousand dollars compensation annually. The qualifications of the Commissioners and the manner of the payment of their salaries shall be as already provided by law. Such enlargement of the Commission shall be accomplished through appointment by the President, by and with the advice and consent of the Senate, of two additional Interstate Commerce Commissioners, one for a term expiring December thirty-first, nineteen hundred and eleven, one for a term expiring December thirty-first, nineteen hundred and twelve. The terms of the present Commissioners, or of any successor appointed to fill a vacancy caused by the death or resignation of any of the present Commissioners, shall expire as heretofore provided by law. Their successors and the successors of the additional Commissioners herein provided for shall be appointed for the full term of seven years, except that any person appointed to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he shall succeed. Not more than four Commissioners shall be appointed from the same political party.

(*Additional provisions in Act of June 29, 1906.*) (Sec. 9.) That all existing laws relating to the attendance of witnesses and the production of evidence and the compelling of testimony under the Act to regulate commerce and all Acts amendatory thereof shall apply to any and all proceedings and hearings under this Act.

(Sec. 10.) That all laws and parts of laws in conflict with the provisions of this Act are hereby repealed; but the amendments herein provided for shall not affect causes now pending in courts of the United States, but such causes shall be prosecuted to a conclusion in the manner heretofore provided by law.

(Sec. 11.) That this Act shall take effect and be in force from and after its passage.

Joint resolution of June 30, 1906, provides: "That the Act entitled 'An Act to amend an Act entitled "An Act to regulate commerce," approved February 4, 1887, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission,' shall take effect and be in force sixty days after its approval by the President of the United States."

* * * * *

That this act shall take effect and be in force from and after the expiration of sixty days after its passage, except as to sections twelve [sec. 15 of Act to regulate commerce, p. 23 herein] and sixteen [sec. 16 of Commerce Court Act, p. 47 herein], which sections shall take effect and be in force immediately.

Public, No. 41, approved February 4, 1887, as amended by Public, No. 125, approved March 2, 1889, and Public, No. 72, approved February 10, 1891. Public, No. 38, approved February 8, 1895. Public, No. 337, approved June 29, 1906. Public Res., No. 47, approved June 30, 1906. Public, No. 95, approved April 13, 1908. Public, No. 262, approved February 25, 1909. Public, No. 218, approved June 18, 1910.

APPENDIX 10.

Immunity of Witnesses Act.

Act of February 11, 1893.

AN ACT In relation to testimony before the Interstate Commerce Commission, and in cases or proceedings under or connected with an act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and amendments thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements and documents before the Interstate Commerce Commission, or in obedience to the subpoena of the Commission, whether such subpoena be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress, entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing, concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpoena, or the subpoena of either of them, or in any such case or proceeding:

Provided, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpoena or lawful requirement of the Commission, shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than one hundred dollars nor more than five thousand dollars, or by imprisonment for not more than one year or by both such fine and imprisonment.

Public, No. 54, approved February 11, 1893 (27 Statutes at Large, 443).

Amendment of June 30, 1906.

AN ACT Defining the right of immunity of witnesses under the Act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, and an act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and an act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That under the immunity provisions in the Act entitled "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, in section six of the Act entitled "An Act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the Act entitled "An Act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and in the Act entitled "An Act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-

fifth, nineteen hundred and three, immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

Public No. 389, approved June 30, 1906 (34 Statutes at Large, 798).

APPENDIX 11.

Elkins Act, as Originally Enacted.

Sec. 1. That anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under this Act shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by this Act with reference to such persons except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate commerce and the Acts amendatory thereto whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereto, or whereby any other advantage is given or discrimination is practiced. Every person or corporation who shall offer, grant, or give or solicit, accept or receive any such rebates, concessions, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars. In all convictions occurring after the passage of this Act for offenses under said Acts to regulate commerce, whether committed before or after the passage

of this Act, or for offenses under this section, no penalty shall be imposed on the convicted party other than the fine prescribed by law, imprisonment wherever now prescribed as part of the penalty being hereby abolished. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier acting within the scope of his employment shall in every case be also deemed to be the act, omission, or failure of such carrier as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the Act to regulate commerce or Acts amendatory thereto, or participate in any rates so filed or published, that rate as against such carrier, its officers, or agents in any prosecution begun under this Act shall be conclusively deemed to be the legal rate and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this Act.

Sec. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Sec. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdic-

tion; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this Act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said Act approved February fourth, eighteen hundred and eighty-seven, entitled An act to regulate commerce and the Acts amendatory thereof. And in proceedings under this Act and the Acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence documentary or otherwise in such proceeding: *Provided*, That the provisions of an Act entitled "An Act to expedite the hearing and determination of suits in equity pending or hereafter brought under the Act of July second, eighteen hundred and ninety, entitled 'An Act to protect trade and commerce against unlawful restraints and

monopolies,' 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other Acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Sec. 4. That all Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, but such repeal shall not affect causes now pending nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this Act.

Sec. 5. That this Act shall take effect from its passage. (32 Statutes at Large, 847. C. 708.)

APPENDIX 12.

Elkins Act as Amended to Date.

AN ACT To further regulate commerce with foreign nations and among the States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, Sec. 1. (As amended June 29, 1906.) That anything done or omitted to be done by a corporation common carrier, subject to the act to regulate commerce and the acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent or person acting for or employed by such corporation, would constitute a misdemeanor under said acts or under this act, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said acts or by this act with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said acts to file and publish the tariffs or rates and charges as required by said acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than one thousand dollars nor more than twenty thousand dollars for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept or receive any rebate, concession, or discrimination in respect to the transportation of any prop-

erty in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said act to regulate commerce and the acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than one thousand dollars nor more than twenty thousand dollars: *Provided*, That any person, or any officer or director of any corporation subject to the provisions of this act, or the act to regulate commerce and the acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

In construing and enforcing the provisions of this section, the act, omission, or failure of any officer, agent, or other person acting for or employed by any common carrier, or shipper, acting within the scope of his employment, shall in every case be also deemed to be the act, omission, or failure of such carrier or shipper as well as that of the person. Whenever any carrier files with the Interstate Commerce Commission or publishes a particular rate under the provisions of the act to regulate commerce or acts amendatory thereof, or participates in any rates so filed or published, that rate as against such carrier, its officers or agents, in any prosecution begun under this act shall be conclusively deemed to be the legal rate, and any departure from such rate, or any offer to depart therefrom, shall be deemed to be an offense under this section of this act.

Any person, corporation, or company who shall deliver prop-

erty for interstate transportation to any common carrier, subject to the provisions of this act, or for whom, as consignor or consignee, any such carrier shall transport property from one State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or foreign country, who shall knowingly by employee, agent, officer, or otherwise, directly or indirectly, by or through any means or device whatsoever, receive or accept from such common carrier any sum of money or any other valuable consideration as a rebate or offset against the regular charges for transportation of such property, as fixed by the schedules of rates provided for in this act, shall in addition to any penalty provided by this act forfeit to the United States a sum of money three times the amount of money so received or accepted and three times the value of any other consideration so received or accepted, to be ascertained by the trial court; and the Attorney-General of the United States is authorized and directed, whenever he has reasonable grounds to believe that any such person, corporation, or company has knowingly received or accepted from any such common carrier any sum of money or other valuable consideration as a rebate or offset as aforesaid, to institute in any court of the United States of competent jurisdiction a civil action to collect the said sum or sums so forfeited as aforesaid; and in the trial of said action all such rebates or other considerations so received or accepted for a period of six years prior to the commencement of the action may be included therein, and the amount recovered shall be three times the total amount of money, or three times the total value of such consideration, so received or accepted, or both, as the case may be.

Sec. 2. That in any proceeding for the enforcement of the provisions of the statutes relating to interstate commerce, whether such proceedings be instituted before the Interstate Commerce Commission or be begun originally in any circuit court of the United States, it shall be lawful to include as parties, in addition to the carrier, all persons interested in or affected by the rate, regulation, or practice under consideration, and inquiries, investigations, orders, and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers.

Sec. 3. That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight

traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts to the circuit court of the United States sitting in equity having jurisdiction; and when the act complained of is alleged to have been committed or as being committed in part in more than one judicial district or State, it may be dealt with, inquired of, tried, and determined in either such judicial district or State, whereupon it shall be the duty of the court summarily to inquire into the circumstances, upon such notice and in such manner as the court shall direct and without the formal pleadings and proceedings applicable to ordinary suits in equity, and to make such other persons or corporations parties thereto as the court may deem necessary, and upon being satisfied of the truth of the allegations of said petition said court shall enforce an observance of the published tariffs or direct and require a discontinuance of such discrimination by proper orders, writs, and process, which said orders, writs, and process may be enforceable as well against the parties interested in the traffic as against the carrier, subject to the right of appeal as now provided by law. It shall be the duty of the several district attorneys of the United States, whenever the Attorney-General shall direct, either of his own motion or upon the request of the Interstate Commerce Commission, to institute and prosecute such proceedings, and the proceedings provided for by this act shall not preclude the bringing of suit for the recovery of damages by any party injured, or any other action provided by said act approved February fourth, eighteen hundred and eighty-seven, entitled An act to regulate commerce and the acts amendatory thereof. And in proceedings under this act and the acts to regulate commerce the said courts shall have the power to compel the attendance of witnesses, both upon the part of the carrier and the shipper, who shall be required to answer on all subjects relating directly or indirectly to the matter in controversy, and to compel the production of all books and papers, both of the carrier and the shipper, which relate directly or indirectly to such transaction; the claim that such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such person from testifying or such corporation producing its books and papers, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in such proceeding: *Provided*, That the provisions of an

act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted, approved February eleventh, nineteen hundred and three," shall apply to any case prosecuted under the direction of the Attorney-General in the name of the Interstate Commerce Commission.

Sec. 4. That all acts and parts of acts in conflict with the provisions of this act are hereby repealed, but such repeal shall not affect causes now pending, nor rights which have already accrued, but such causes shall be prosecuted to a conclusion and such rights enforced in a manner heretofore provided by law and as modified by the provisions of this act.

Sec. 5. That this act shall take effect from its passage.

Public, No. 103, approved February 19, 1903, (32 Statutes at Large, 847), as amended June 29, 1906, (34 Statutes at Large, 584).

(See additional provisions in act of June 29, 1906, p. 32.)

APPENDIX 13.

Expediting Act.

AN ACT To expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney-General may file with the clerk of such court a certificate that, in his opin-

ion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.

Sec. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

Public No. 82, approved February 11, 1903 (32 Statutes at Large, 823).

APPENDIX 14.

Government-Aided Railroad Act.

AN ACT Supplementary to the act of July first, eighteen hundred and sixty-two, entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," and also of the act of July second, eighteen hundred and sixty-four, and other acts amendatory of said first named act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all railroad and telegraph companies to which the United States has granted any subsidy in lands or bonds or loan of credit for the construction of either railroad or telegraph lines, which, by the acts incorporating them, or by any act amendatory or supplementary thereto, are required to construct, maintain, or operate telegraph lines, and all companies en-

gaged in operating said railroad or telegraph lines shall forthwith and henceforward, by and through their own respective corporate officers and employees, maintain and operate, for railroad, Governmental, commercial, and all other purposes, telegraph lines, and exercise by themselves alone all the telegraph franchises conferred upon them and obligations assumed by them under the acts making the grants as aforesaid.

Sec. 2. That whenever any telegraph company which shall have accepted the provisions of title sixty-five of the Revised Statutes shall extend its line to any station or office of a telegraph line belonging to any one of said railroad or telegraph companies, referred to in the first section of this act, said telegraph company so extending its line shall have the right and said railroad or telegraph company shall allow the line of said telegraph company so extending its line to connect with the telegraph line of said railroad or telegraph company to which it is extended at the place where their lines may meet, for the prompt and convenient interchange of telegraph business between said companies; and such railroad and telegraph companies, referred to in the first section of this act, shall so operate their respective telegraph lines as to afford equal facilities to all, without discrimination in favor of or against any person, company, or corporation whatever, and shall receive, deliver, and exchange business with connecting telegraph lines on equal terms, and affording equal facilities, and without discrimination for or against any one of such connecting lines; and such exchange of business shall be on terms just and equitable.

Sec. 3. That if any such railroad or telegraph company referred to in the first section of this act, or company operating such railroad or telegraph line shall refuse or fail, in whole or in part, to maintain, and operate a telegraph line as provided in this act and acts to which this is supplementary, for the use of the Government or the public, for commercial and other purposes, without discrimination, or shall refuse or fail to make or continue such arrangements for the interchange of business with any connecting telegraph company, then any person, company, corporation, or connecting telegraph company may apply for relief to the Interstate Commerce Commission, whose duty it shall thereupon be, under such rules and regulations as said Commission may prescribe, to ascertain the facts, and determine and order what arrangement is proper to be made in the particular case, and the railroad or telegraph company concerned shall abide by and perform such order; and it shall be the duty of the Interstate

Commerce Commission, when such determination and order are made, to notify the parties concerned, and, if necessary, enforce the same by writ of mandamus in the courts of the United States, in the name of the United States, at the relation of either of said Interstate Commerce Commissioners: *Provided*, That the said Commissioners may institute any inquiry, upon their own motion, in the same manner and to the same effect as though complaint had been made.

Sec. 4. That in order to secure and preserve to the United States the full value and benefit of its liens upon all the telegraph lines required to be constructed by and lawfully belonging to said railroad and telegraph companies referred to in the first section of this act, and to have the same possessed, used, and operated in conformity with the provisions of this act and of the several acts to which this act is supplementary, it is hereby made the duty of the Attorney-General of the United States, by proper proceedings, to prevent any unlawful interference with the rights and equities of the United States under this act, and under the acts hereinbefore mentioned, and under all acts of Congress relating to such railroads and telegraph lines, and to have legally ascertained and finally adjudicated all alleged rights of all persons and corporations whatever claiming in any manner any control or interest of any kind in any telegraph lines or property, or exclusive rights of way upon the lands of said railroad companies, or any of them, and to have all contracts and provisions of contracts set aside and annulled which have been unlawfully and beyond their powers entered into by said railroad or telegraph companies, or any of them, with any other person, company, or corporation.

Sec. 5. That any officer or agent of said railroad or telegraph companies, or of any company operating the railroads and telegraph lines of said companies, who shall refuse or fail to operate the telegraph lines of said railroad or telegraph companies under his control, or which he is engaged in operating, in the manner directed in this act and by the acts to which it is supplementary, or who shall refuse or fail, in such operation and use, to afford and secure to the Government and the public equal facilities, or to secure to each of said connecting telegraph lines equal advantages and facilities in the interchange of business, as herein provided for, without any discrimination whatever for or adverse to the telegraph line of any or either of said connecting companies, or shall refuse to abide by, or perform and carry out within a reasonable time the order or orders of the Interstate Commerce Commission,

shall in every such case of refusal or failure be guilty of a misdemeanor, and, on conviction thereof, shall in every such case be fined in a sum not exceeding one thousand dollars, and may be imprisoned not less than six months; and in every such case of refusal or failure the party aggrieved may not only cause the officer or agent guilty thereof to be prosecuted under the provisions of this section, but may also bring an action for the damages sustained thereby against the company whose officer or agent may be guilty thereof, in the circuit or district court of the United States in any State or Territory in which any portion of the road or telegraph line of said company may be situated; and in case of suit process may be served upon any agent of the company found in such State or Territory, and such service shall be held by the court good and sufficient.

Sec. 6. That it shall be the duty of each and every one of the aforesaid railroad and telegraph companies, within sixty days from and after the passage of this act, to file with the Interstate Commerce Commission copies of all contracts and agreements of every description existing between it and every other person or corporation whatsoever in reference to the ownership, possession, maintenance, control, use, or operation of any telegraph lines, or property over or upon its rights of way, and also a report describing with sufficient certainty the telegraph lines and property belonging to it, and the manner in which the same are being then used and operated by it, and the telegraph lines and property upon its right of way in which any other person or corporation claims to have a title or interest, and setting forth the grounds of such claim, and the manner in which the same are being then used and operated; and it shall be the duty of each and every one of said railroad and telegraph companies annually hereafter to report to the Interstate Commerce Commission, with reasonable fullness and certainty, the nature, extent, value, and condition of the telegraph lines and property then belonging to it, the gross earnings, and all expenses of maintenance, use, and operation thereof, and its relation and business with all connecting telegraph companies during the preceding year, at such time and in such manner as may be required by a system of reports which said Commission shall prescribe; and if any of said railroad or telegraph companies shall refuse or fail to make such reports or any report as may be called for by said Commission, or refuse to submit its books and records for inspection, such neglect or refusal shall operate as a forfeiture, in each case of such neglect or refusal, of a sum not less than one thousand

dollars nor more than five thousand dollars, to be recovered by the Attorney-General of the United States, in the name and for the use and benefit of the United States; and it shall be the duty of the Interstate Commerce Commission to inform the Attorney-General of all such cases of neglect or refusal, whose duty it shall be to proceed at once to judicially enforce the forfeitures hereinbefore provided.

Sec. 7. That nothing in this act shall be construed to affect or impair the right of Congress, at any time hereafter, to alter, amend, or repeal the said acts hereinbefore mentioned; and this act shall be subject to alteration, amendment, or repeal as, in the opinion of Congress, justice or the public welfare may require; and nothing herein contained shall be held to deny, exclude, or impair any right or remedy in the premises now existing in the United States, or any authority that the Postmaster-General now has under title sixty-five of the Revised Statutes to fix rates, or, of the Government, to purchase lines as provided under said title, or to have its messages given precedence in transmission.

Public No. 237, approved August 7, 1888 (25 Statutes at Large, 382).

APPENDIX 15.

The Safety Appliance Acts.

Act of March 2, 1893.

AN ACT To promote the safety of employees and travelers upon railroads by compelling common carriers, engaged in interstate commerce, to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any common carrier engaged in interstate commerce by railroad to use on its line any locomotive engine in moving interstate traffic not equipped with a power driving-wheel brake and appliances for operating the train-brake system, or to run any train in such traffic after said date that has not a sufficient number of cars in it so equipped with power or train brakes that the engineer on the locomotive drawing such train can control its speed without requiring brakemen to use the common hand brake for that purpose.

Sec. 2. That on and after the first day of January, eighteen hundred and ninety-eight, it shall be unlawful for any such common carrier to haul or permit to be hauled or used on its line any car used in moving interstate traffic not equipped with couplers coupling automatically by impact, and which can be uncoupled without the necessity of men going between the ends of the cars.

Sec. 3. That when any person, firm, company, or corporation engaged in interstate commerce by railroad shall have equipped a sufficient number of its cars so as to comply with the provisions of section one of this act, it may lawfully refuse to receive from connecting lines of road or shippers any cars not equipped sufficiently, in accordance with the first section of this act, with such power or train brakes as will work and readily interchange with the brakes in use on its own cars, as required by this act.

Sec. 4. That from and after the first day of July, eighteen hundred and ninety-five, until otherwise ordered by the Interstate Commerce Commission, it shall be unlawful for any railroad company to use any car in interstate commerce that is not provided with secure grab irons or handholds in the ends and sides of each car for greater security to men in coupling and uncoupling cars.

Sec. 5. That within ninety days from the passage of this act the American Railway Association is authorized hereby to designate to the Interstate Commerce Commission the standard height of drawbars for freight cars, measured perpendicular from the level of the tops of the rails to the centers of the drawbars, for each of the several gauges of railroads in use in the United States, and shall fix a maximum variation from such standard height to be allowed between the drawbars of empty and loaded cars. Upon their determination being certified to the Interstate Commerce Commission, said Commission shall at once give notice of the standard fixed upon to all common carriers, owners, or lessees engaged in interstate commerce in the United States by such means as the Commission may deem proper. But should said association fail to determine a standard as above provided, it shall be the duty of the Interstate Commerce Commission to do so, before July first, eighteen hundred and ninety-four, and immediately to give notice thereof as aforesaid. And after July first, eighteen hundred and ninety-five, no cars, either loaded or unloaded, shall be used in interstate traffic which do not comply with the standard above provided for.

Sec. 6. (*As amended April 1, 1896.*) That any such common

carrier using any locomotive engine, running any train, or hauling or permitting to be hauled or used on its line any car in violation of any of the provisions of this act, shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge: *Provided*, That nothing in this act contained shall apply to trains composed of four-wheel cars or to trains composed of eight-wheel standard logging cars where the height of such car from top of rail to center of coupling does not exceed twenty-five inches, or to locomotives used in hauling such trains when such cars or locomotives are exclusively used for the transportation of logs.

Sec. 7. That the Interstate Commerce Commission may from time to time upon full hearing and for good cause extend the period within which any common carrier shall comply with the provisions of this act.

Sec. 8. That any employee of any such common carrier who may be injured by any locomotive, car, or train in use contrary to the provision of this act shall not be deemed thereby to have assumed the risk thereby occasioned, although continuing in the employment of such carrier after the unlawful use of such locomotive, car, or train had been brought to his knowledge.

Public No. 113, approved March 2, 1893 (27 Statutes at Large, 531), as amended by an act approved April 1, 1896 (29 Statutes at Large, 85).

Note.—Prescribed standard height of drawbars: Standard-gauge roads, $34\frac{1}{2}$ inches; narrow-gauge roads, 26 inches; maximum variation between loaded and empty cars, 3 inches.

Amendment of March 2, 1903.

AN ACT To amend an act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers, engaged in interstate commerce, to equip their cars with automatic couplers and continuous brakes and their locomotives with driving-wheel brakes, and for other purposes," approved March

second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions and requirements of the act entitled "An act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes, and their locomotives with driving-wheel brakes, and for other purposes," approved March second, eighteen hundred and ninety-three, and amended April first, eighteen hundred and ninety-six, shall be held to apply to common carriers by railroads in the Territories and the District of Columbia and shall apply in all cases, whether or not the couplers brought together are of the same kind, make, or type; and the provisions and requirements hereof and of said acts relating to train brakes, automatic couplers, grab irons, and the height of drawbars shall be held to apply to all trains, locomotives, tenders, cars, and similar vehicles used on any railroad engaged in interstate commerce, and in the Territories and the District of Columbia, and to all other locomotives, tenders, cars, and similar vehicles used in connection therewith, excepting those trains, cars, and locomotives exempted by the provisions of section six of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, or which are used upon street railways.

Sec. 2. That whenever, as provided in said act, any train is operated with power or train brakes, not less than fifty per centum of the cars in such train shall have their brakes used and operated by the engineer of the locomotive drawing such train; and all power-braked cars in such train which are associated together with said fifty per centum shall have their brakes so used and operated; and, to more fully carry into effect the objects of said act, the Interstate Commerce Commission may, from time to time, after full hearing, increase the minimum percentage of cars in any train required to be operated with power or train brakes which must have their brakes used and operated as aforesaid; and failure to comply with any such requirement of the said Interstate Commerce Commission shall be subject to the like penalty as failure to comply with any requirement of this section.

Sec. 3. That the provisions of this act shall not take effect until September first, nineteen hundred and three. Nothing

in this act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States district attorney from any of the provisions, powers, duties, liabilities, or requirements of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six; and all of the provisions, powers, duties, requirements, and liabilities of said act of March second, eighteen hundred and ninety-three, as amended by the act of April first, eighteen hundred and ninety-six, shall, except as specifically amended by this act, apply to this act.

Public, No. 133, approved March 2, 1903 (32 Statutes at Large, 943).

Amendment of April 14, 1910.

AN ACT To supplement "An Act to promote the safety of employees and travelers upon railroads by compelling common carriers engaged in interstate commerce to equip their cars with automatic couplers and continuous brakes and their locomotives with driving wheel brakes and for other purposes," and other safety appliance Acts and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to every common carrier and every vehicle subject to the Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, commonly known as the "Safety Appliance Acts."

Sec. 2. That on and after July first, nineteen hundred and eleven, it shall be unlawful for any common carrier subject to the provisions of this Act to haul, or permit to be hauled or used on its line any car subject to the provisions of this Act not equipped with appliances provided for in this Act, to wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure hand holds or grab irons on their roofs at the tops of such ladders: *Provided*, That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose.

Sec. 3. That within six months from the passage of this Act the Interstate Commerce Commission, after hearing, shall designate the number, dimensions, location, and manner of ap-

plication of the appliances provided for by section two of this Act and section four of the Act of March second, eighteen hundred and ninety-three, and shall give notice of such designation to all common carriers subject to the provisions of this Act by such means as the Commission may deem proper, and thereafter said number, location, dimensions, and manner of application as designated by said Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this Act, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this Act: *Provided*, That the Interstate Commerce Commission may, upon full hearing and for good cause, extend the period within which any common carrier shall comply with the provisions of this section with respect to the equipment of cars actually in service upon the date of the passage of this Act. Said commission is hereby given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard so prescribed by the Commission.

Sec. 4. That any common carrier subject to this Act using, hauling, or permitting to be used or hauled on its line any car subject to the requirements of this Act not equipped as provided in this Act shall be liable to a penalty of one hundred dollars for each and every such violation, to be recovered as provided in section six of the Act of March second, eighteen hundred and ninety-three, as amended April first, eighteen hundred and ninety-six: *Provided*, That where any car shall have been properly equipped, as provided in this Act and the other Acts mentioned herein, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by section four of this Act or section six of the Act of March second, eighteen hundred and ninety-three, as amend-

ed by the Act of April first, eighteen hundred and ninety-six, if such movement is necessary to make such repairs and such repairs can not be made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of this Act and the other Acts herein referred to; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of draw-bars, in revenue trains or in association with other cars that are commercially used, unless such defective cars contain live stock or "perishable" freight.

Sec. 5. That except that, within the limits specified in the preceding section of this Act, the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in this Act shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements of said Act of March second, eighteen hundred and ninety-three, as amended by the Acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three; and, except as aforesaid, all of the provisions, powers, duties, requirements, and liabilities of said Act of March second, eighteen hundred and ninety-three, as amended by the Acts of April first, eighteen hundred and ninety-six, and March second, nineteen hundred and three, shall apply to this Act.

Sec. 6. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this Act, and all powers heretofore granted to said Commission are hereby extended to it for the purpose of the enforcement of this Act.

Public, No. 133, approved, April 14, 1910. [H. R. 5703.]

Sundry civil act (appropriations) of June 28, 1902, authorizes Commission to employ "inspectors to execute and enforce the requirements of the safety-appliance act." (32 Statutes at Large, 444).

APPENDIX 16.**Block-Signal Resolution.**

JOINT RESOLUTION Directing the Interstate Commerce Commission to investigate and report on block-signal systems and appliances for the automatic control of railway trains.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission be, and it is hereby, directed to investigate and report on the use of and necessity for block-signal systems and appliances for the automatic control of railway trains in the United States. For this purpose the Commission is authorized to employ persons who are familiar with the subject, and may use such of its own employees as are necessary to make a thorough examination into the matter.

In transmitting its report to the Congress the Commission shall recommend such legislation as to the Commission seems advisable.

To carry out and give effect to the provisions of this resolution the Commission shall have power to issue subpoenas, administer oaths, examine witnesses, require the production of books and papers, and receive depositions taken before any proper officer in any State or Territory of the United States.

Public Resolution No. 46, approved June 30, 1906 (34 Statutes at Large, 838).

APPENDIX 17.**Interlocking Act.**

AN ACT To grant the right of way through the Oklahoma Territory and the Indian Territory to the Enid and Anadarko Railway Company, and for other purposes.

* * * * *

Sec. 18. That when in any case two or more railroads crossing each other at a common grade shall, by a system of interlocking or automatic signals, or by any works or fixtures to be erected by them, render it safe for engines and trains to pass over such crossing without stopping, and such interlocking or automatic signals or works or fixtures shall be approved by the Interstate Commerce Commissioners, then, in that case, it is hereby made lawful for the engines and trains of such railroad or railroads to pass over such crossing without stopping, any law or the provisions of any law to the contrary notwithstanding; and when two or more railroads cross each

other at a common grade, either of such roads may apply to the Interstate Commerce Commissioners for permission to introduce upon both of said railroads some system of interlocking or automatic signals or works or fixtures rendering it safe for engines and trains to pass over such crossings without stopping, and it shall be the duty of said Interstate Commerce Commissioners, if the system of works and fixtures which it is proposed to erect by said company are, in the opinion of the Commission, sufficient and proper, to grant such permission.

Sec. 19. That any railroad company which has obtained permission to introduce a system of interlocking or automatic signals at its crossing at a common grade with any other railroad, as provided in the last section, may, after thirty days' notice, in writing, to such other railroad company, introduce and erect such interlocking or automatic signal or fixtures; and if such railroad company, after such notification, refuses to join with the railroad company giving notice in the construction of such works or fixtures, it shall be lawful for said company to enter upon the right of way and tracks of such second company, in such manner as to not unnecessarily impede the operation of such road, and erect such works and fixtures, and may recover in any action at law from such second company one-half of the total cost of erecting and maintaining such interlocking or automatic signals or works or fixtures on both of said roads.

* * * * *

Public No. 26, approved February 28, 1902 (32 Statutes at Large, 50).

APPENDIX 18.

Accident-Reports Act.

AN ACT Requiring common carriers engaged in interstate and foreign commerce to make full reports of all accidents to the Interstate Commerce Commission, and authorizing investigations thereof by said Commission.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the duty of the general manager, superintendent, or other proper officer of every common carrier engaged in interstate or foreign commerce by railroad to make to the Interstate Commerce Commission, at its office in Washington, District of Columbia, a monthly report, under oath, of all col-

lisions, derailments, or other accidents resulting in injury to persons, equipment, or roadbed arising from the operation of such railroad under such rules and regulations as may be prescribed by the said Commission, which report shall state the nature and causes thereof and the circumstances connected therewith: *Provided*, That hereafter all said carriers shall be relieved from the duty of reporting accidents in their annual financial and operating reports made to the Commission.

Sec. 2. That any common carrier failing to make such report within thirty days after the end of any month shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not more than one hundred dollars for each and every offense and for every day during which it shall fail to make such report after the time herein specified for making the same.

Sec. 3. That the Interstate Commerce Commission shall have authority to investigate all collisions, derailments, or other accidents resulting in serious injury to person or to the property of a railroad occurring on the line of any common carrier engaged in interstate or foreign commerce by railroad. The Commission, or any impartial investigator thereunto authorized by said Commission, shall have authority to investigate such collisions, derailments, or other accidents aforesaid, and all the attending facts, conditions, and circumstances, and for that purpose may subpoena witnesses, administer oaths, take testimony, and require the production of books, papers, orders, memoranda, exhibits, and other evidence, and shall be provided by said carriers with all reasonable facilities: *Provided*, That when such accident is investigated by a commission of the State in which it occurred, the Interstate Commerce Commission shall, if convenient, make any investigation it may have previously determined upon, at the same time as, and in connection with, the state commission investigation. Said Commission shall, when it deems it to the public interest, make reports of such investigations, stating the cause of accident, together with such recommendations as it deems proper. Such reports shall be made public in such manner as the Commission deems proper.

Sec. 4. That neither said report nor any report of said investigation nor any part thereof shall be admitted as evidence or used for any purpose in any suit or action for damages growing out of any matter mentioned in said report or investigation.

Sec. 5. That the Interstate Commerce Commission is au-

thorized to prescribe for such common carriers a method and form for making the reports hereinbefore provided.

Sec. 6. That the Act entitled "An Act requiring common carriers engaged in interstate commerce to make full reports of all accidents to the Interstate Commerce Commission," approved March third, nineteen hundred and one, is hereby repealed.

Sec. 7. That the term "interstate commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any other State or Territory or the District of Columbia, and the term "foreign commerce," as used in this Act, shall include transportation from any State or Territory or the District of Columbia to any foreign country and from any foreign country to any State or Territory or the District of Columbia.

Sec. 8. That this Act shall take effect sixty days after its passage.

Public, No. 165, approved, May 6, 1910.

APPENDIX 19.

Coal and Oil Resolutions.

Act of March 7, 1906.

JOINT RESOLUTION Instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies in coal and oil, and report on the same from time to time.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Interstate Commerce Commission be, and is hereby, authorized and instructed immediately to inquire, investigate, and report to Congress, or to the President when Congress is not in session, from time to time as the investigation proceeds—

First. Whether any common carriers by railroad, subject to the interstate-commerce act, or either of them, own or have any interest in, by means of stock ownership in other corporations or otherwise, any of the coal or oil which they, or either of them, directly or through other companies which they control or in which they have an interest, carry over their or any of their lines as common carriers, or in any manner own, control, or have any interest in coal lands or properties or oil lands or properties.

Second. Whether the officers of any of the carrier companies aforesaid, or any of them, or any person or persons

charged with the duty of distributing cars or furnishing facilities to shippers are interested, either directly or indirectly, by means of stock ownership or otherwise in corporations or companies owning, operating, leasing, or otherwise interested in any coal mines, coal properties, or coal traffic, oil, oil properties, or oil traffic over the railroads with which they or any of them are connected or by which they or any of them are employed.

Third. Whether there is any contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce among the several States, in which any common carrier engaged in the transportation of coal or oil is interested, or to which it is a party; and whether any such common carrier monopolizes or attempts to monopolize, or combines or conspires with any other carrier, company or companies, person or persons to monopolize any part of the trade or commerce in coal or oil, or traffic therein among the several States or with foreign nations, and whether or not, and if so, to what extent, such carriers, or any of them, limit or control, directly or indirectly, the output of coal mines or the price of coal and oil fields or the price of oil.

Fourth. If the Interstate Commerce Commission shall find that the facts or any of them set forth in the three paragraphs above do exist, then that it be further required to report as to the effect of such relationship, ownership, or interest in coal or coal properties and coal traffic, or oil, oil properties, or oil traffic aforesaid, or such contracts or combinations in form of trust or otherwise, or conspiracy or such monopoly or attempt to monopolize or combine or conspire as aforesaid, upon such person or persons as may be engaged independently of any other persons in mining coal or producing oil and shipping the same, or other products, who may desire to so engage, or upon the general public as consumers of such coal or oil.

Fifth. That said Commission be also required to investigate and report the system of car supply and distribution in effect upon the several railway lines engaged in the transportation of coal or oil as aforesaid, and whether said systems are fair and equitable, and whether the same are carried out fairly and properly; and whether said carriers, or any of them discriminate against shippers or parties wishing to become shippers over their several lines, either in the matter of distribution of cars or in furnishing facilities or instrumentalities connected with receiving, forwarding, or carrying coal or oil as aforesaid.

Sixth. That said Commission be also required to report as to what remedy it can suggest to cure the evils above set forth, if they exist.

Seventh. That said Commission be also required to report any facts or conclusions which it may think pertinent to the general inquiry above set forth.

Eighth. That said Commission be required to make this investigation at its earliest possible convenience and to furnish the information above required from time to time and as soon as it can be done consistent with the performance of its public duty.

Public Res. No. 8, approved March 7, 1906 (34 Statutes at Large, 823).

Amendment of March 21, 1906.

JOINT RESOLUTION Amending joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies, and report on the same from time to time, approved March seventh, nineteen hundred and six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies, and report on the same from time to time, approved March seventh, nineteen hundred and six, is hereby amended by adding the following thereto:

Ninth. To enable the Commission to perform the duties required and accomplish the purposes declared herein, the Commission shall have and exercise under this joint resolution the same power and authority to administer oaths, to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence, and to obtain full information, which said Commission now has under the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and acts amendatory thereof or supplementary thereto now in force or may have under any like statute taking effect hereafter. All the requirements, obligations, liabilities, and immunities imposed or conferred by said act to regulate commerce and by "An act in relation to testimony before the Interstate Commerce Commission in cases under or connected with an act entitled 'An act to regulate commerce' approved February fourth, eighteen hundred and eighty-seven, and amendments thereto," approved February eleventh, eighteen hundred and ninety-three, shall also apply to all persons who

may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority herein conferred.

Public Res. No. 11, approved March 21, 1906 (34 Statutes at Large, 824).

APPENDIX 20.

Arbitration Act.

AN ACT Concerning carriers engaged in interstate commerce and their employees.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this act shall apply to any common carrier or carriers and their officers, agents, and employees, except masters of vessels and seamen, as defined in section forty-six hundred and twelve, Revised Statutes of the United States, engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage.

The term "employees" as used in this act shall include all persons actually engaged in any capacity in train operation or train service of any description, and notwithstanding that the cars upon or in which they are employed may be held and operated by the carrier under lease or other contract: *Provided, however,* That this act shall not be held to apply to employees of street railroads and shall apply only to employees engaged in railroad train service. In every such case the carrier shall be responsible for the acts and defaults of such employees in the same manner and to the same extent as if said cars were owned by it and said employees directly employed by it, and any provisions to the contrary of any such lease or other contract shall be binding only as between the parties thereto and shall not affect the obligations of

said carrier either to the public or to the private parties concerned.

Sec. 2. That whenever a controversy concerning wages, hours of labor, or conditions of employment shall arise between a carrier subject to this act and the employees of such carrier, seriously interrupting or threatening to interrupt the business of said carrier, the chairman of the Interstate Commerce Commission and the Commissioner of Labor shall, upon the request of either party to the controversy, with all practicable expedition, put themselves in communication with the parties to such controversy, and shall use their best efforts, by mediation and conciliation, to amicably settle the same; and if such efforts shall be unsuccessful, shall at once endeavor to bring about an arbitration of said controversy in accordance with the provisions of this act.

Sec. 3. That whenever a controversy shall arise between a carrier subject to this act and the employees of such carrier which can not be settled by mediation and conciliation in the manner provided in the preceding section, said controversy may be submitted to the arbitration of a board of three persons, who shall be chosen in the manner following: One shall be named by the carrier or employer directly interested; the other shall be named by the labor organization to which the employees directly interested belong, or, if they belong to more than one, by that one of them which specially represents employees of the same grade and class and engaged in services of the same nature as said employees so directly interested: *Provided, however,* That when a controversy involves and affects the interests of two or more classes and grades of employees belonging to different labor organizations, such arbitrator shall be agreed upon and designated by the concurrent action of all such labor organizations; and in cases where the majority of such employees are not members of any labor organization, said employees may by a majority vote select a committee of their own number, which committee shall have the right to select the arbitrator on behalf of said employees. The two thus chosen shall select the third commissioner of arbitration; but, in the event of their failure to name such arbitrator within five days after their first meeting, the third arbitrator shall be named by the commissioners named in the preceding section. A majority of said arbitrators shall be competent to make a valid and binding award under the provisions hereof. The submission shall be in writing, shall be signed by the employer and by the labor organization representing the employees, shall specify the time and

place of meeting of said board of arbitration, shall state the questions to be decided, and shall contain appropriate provisions by which the respective parties shall stipulate, as follows:

First. That the board of arbitration shall commence their hearings within ten days from the date of the appointment of the third arbitrator, and shall find and file their award, as provided in this section, within thirty days from the date of the appointment of the third arbitrator; and that pending the arbitration the status existing immediately prior to the dispute shall not be changed: *Provided*, That no employee shall be compelled to render personal service without his consent.

Second. That the award and the papers and proceedings, including the testimony relating thereto certified under the hands of the arbitrators and which shall have the force and effect of a bill of exceptions, shall be filed in the clerk's office of the circuit court of the United States for the district wherein the controversy arises or the arbitration is entered into, and shall be final and conclusive upon both parties, unless set aside for error of law apparent on the record.

Third. That the respective parties to the award will each faithfully execute the same, and that the same may be specifically enforced in equity so far as the powers of a court of equity permit: *Provided*, That no injunction or other legal process shall be issued which shall compel the performance by any laborer against his will of a contract for personal labor or service.

Fourth. That employees dissatisfied with the award shall not by reason of such dissatisfaction quit the service of the employer before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of their intention so to quit. Nor shall the employer dissatisfied with such award dismiss any employee or employees on account of such dissatisfaction before the expiration of three months from and after the making of such award without giving thirty days' notice in writing of his intention so to discharge.

Fifth. That said award shall continue in force as between the parties thereto for the period of one year after the same shall go into practical operation, and no new arbitration upon the same subject between the same employer and the same class of employees shall be had until the expiration of said one year if the award is not set aside as provided in section four. That as to individual employees not belonging to the

labor organization or organizations which shall enter into the arbitration, the said arbitration and the award made therein shall not be binding, unless the said individual employees shall give assent in writing to become parties to said arbitration.

Sec. 4. That the award being filed in the clerk's office of a circuit court of the United States, as hereinbefore provided, shall go into practical operation, and judgment shall be entered thereon accordingly at the expiration of ten days from such filing, unless within such ten days either party shall file exceptions thereto for matter of law apparent upon the record, in which case said award shall go into practical operation and judgment be entered accordingly when such exceptions shall have been finally disposed of either by said circuit court or on appeal therefrom.

At the expiration of ten days from the decision of the circuit court upon exceptions taken to said award, as aforesaid, judgment shall be entered in accordance with said decision unless during said ten days either party shall appeal therefrom to the circuit court of appeals. In such case only such portion of the record shall be transmitted to the appellate court as is necessary to the proper understanding and consideration of the questions of law presented by said exceptions and to be decided.

The determination of said circuit court of appeals upon said questions shall be final, and being certified by the clerk thereof to said circuit court, judgment pursuant thereto shall thereupon be entered by said circuit court.

If exceptions to an award are finally sustained, judgment shall be entered setting aside the award. But in such case the parties may agree upon a judgment to be entered disposing of the subject-matter of the controversy, which judgment when entered shall have the same force and effect as judgment entered upon an award.

Sec. 5. That for the purposes of this act the arbitrators herein provided for, or either of them, shall have power to administer oaths and affirmations, sign subpoenas, require the attendance and testimony of witnesses, and the production of such books, papers, contracts, agreements, and documents material to a just determination of the matters under investigation as may be ordered by the court; and may invoke the aid of the United States courts to compel witnesses to attend and testify and to produce such books, papers, contracts, agreements and documents to the same extent and under the same conditions and penalties as is provided for in the act to

regulate commerce, approved February fourth, eighteen hundred and eighty-seven, and the amendments thereto.

Sec. 6. That every agreement of arbitration under this act shall be acknowledged by the parties before a notary public or clerk of a district or circuit court of the United States, and when so acknowledged a copy of the same shall be transmitted to the chairman of the Interstate Commerce Commission, who shall file the same in the office of said Commission.

Any agreement of arbitration which shall be entered into conforming to this act, except that it shall be executed by employees individually instead of by a labor organization as their representative, shall, when duly acknowledged as herein provided, be transmitted to the chairman of the Interstate Commerce Commission, who shall cause a notice in writing to be served upon the arbitrators, fixing a time and place for a meeting of said board, which shall be within fifteen days from the execution of said agreement of arbitration: *Provided, however,* That the said chairman of the Interstate Commerce Commission shall decline to call a meeting of arbitrators under such agreement unless it be shown to his satisfaction that the employees signing the submission represent or include a majority of all employees in the service of the same employer and of the same grade and class, and that an award pursuant to said submission can justly be regarded as binding upon all such employees.

Sec. 7. That during the pendency of arbitration under this act it shall not be lawful for the employer, party to such arbitration, to discharge the employees, parties thereto, except for inefficiency, violation of law, or neglect of duty; nor for the organization representing such employees to order, nor for the employees to unite in, aid, or abet, strikes against said employer; nor, during a period of three months after an award under such an arbitration, for such employer to discharge any such employees, except for the causes aforesaid, without giving thirty days' written notice of an intent so to discharge; nor for any of such employees, during a like period, to quit the service of said employer without just cause, without giving to said employer thirty days' written notice of an intent so to do; nor for such organization representing such employees to order, counsel, or advise otherwise. Any violation of this section shall subject the offending party to liability for damages: *Provided,* That nothing herein contained shall be construed to prevent any employer, party to such arbitration, from reducing the number of its or his employees when-

ever in its or his judgment business necessities require such reduction.

Sec. 8. That in every incorporation under the provisions of chapter five hundred and sixty-seven of the United States Statutes of eighteen hundred and eighty-five and eighteen hundred and eighty-six it must be provided in the articles of incorporation and in the constitution, rules, and by-laws that a member shall cease to be such by participating in or by instigating force or violence against persons or property during strikes, lockouts, or boycotts, or by seeking to prevent others from working through violence, threats, or intimidations. Members of such incorporations shall not be personally liable for the acts, debts, or obligations of the corporations, nor shall such corporations be liable for the acts of members or others in violation of law; and such corporations may appear by designated representatives before the board created by this act, or in any suits or proceedings for or against such corporations or their members in any of the Federal courts.

Sec. 9. That whenever receivers appointed by Federal courts are in the possession and control of railroads, the employees upon such railroads shall have the right to be heard in such courts upon all questions affecting the terms and conditions of their employment, through the officers and representatives of their associations, whether incorporated or unincorporated, and no reduction of wages shall be made by such receivers without the authority of the court therefor upon notice to such employees, said notice to be not less than twenty days before the hearing upon the receivers' petition or application, and to be posted upon all customary bulletin boards along or upon the railway operated by such receiver or receivers.

Sec. 10. That any employer subject to the provisions of this act and any officer, agent, or receiver of such employer who shall require any employee, or any person seeking employment, as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor corporation, association, or organization; or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization; or who shall require any employee or any person seeking employment, as a condition of such employment, to enter into a contract whereby such employee or applicant for employment shall agree to contribute to any fund for charitable, social, or beneficial purposes; to release such employer from legal liability for any personal injury

by reason of any benefit received from such fund beyond the proportion of the benefit arising from the employer's contribution to such fund; or who shall, after having discharged an employee, attempt or conspire to prevent such employee from obtaining employment, or who shall, after the quitting of an employee, attempt or conspire to prevent such employee from obtaining employment, is hereby declared to be guilty of a misdemeanor, and, upon conviction thereof in any court of the United States of competent jurisdiction in the district in which such offense was committed, shall be punished for each offense by a fine of not less than one hundred dollars and not more than one thousand dollars.

Sec. 11. That each member of said board of arbitration shall receive a compensation of ten dollars per day for the time he is actually employed, and his traveling and other necessary expenses; and a sum of money sufficient to pay the same, together with the traveling and other necessary and proper expenses of any conciliation or arbitration had hereunder, not to exceed ten thousand dollars in any one year, to be approved by the chairman of the Interstate Commerce Commission and audited by the proper accounting officers of the Treasury, is hereby appropriated for the fiscal years ending June thirtieth, eighteen hundred and ninety-eight, and June thirtieth, eighteen hundred and ninety-nine, out of any money in the Treasury not otherwise appropriated.

Sec. 12. That the act to create boards of arbitration or commission for settling controversies and differences between railroad corporations and other common carriers engaged in interstate or territorial transportation of property or persons and their employees, approved October first, eighteen hundred and eighty-eight, is hereby repealed.

Public No. 115, approved June 1, 1898 (30 Statutes at Large, 424).

APPENDIX 21.

Medal of Honor Act.

AN ACT To promote the security of travel upon railroads engaged in interstate commerce, and to encourage the saving of life.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized to cause to be prepared bronze medals of honor, with suitable emblematic devices, which shall be bestowed upon any persons who shall hereafter, by extreme daring, endanger

their own lives in saving, or endeavoring to save lives, from any wreck, disaster, or grave accident, or in preventing or endeavoring to prevent such wreck, disaster, or grave accident, upon any railroad within the United States engaged in interstate commerce: *Provided*, That no award of said medal shall be made to any person until sufficient evidence of his deserving shall have been furnished and placed on file, under such regulations as may be prescribed by the President of the United States.

Sec. 2. That the President of the United States be, and he is hereby, authorized to issue to any person to whom a medal of honor may be awarded under the provisions of this Act a rosette or knot, to be worn in lieu of the medal, and a ribbon to be worn with the medal; said rosette or knot and ribbon to be each of a pattern to be prescribed by the President of the United States: *Provided*, That whenever a ribbon issued under the provisions of this Act shall have been lost, destroyed, or rendered unfit for use without fault or neglect on the part of the person to whom it was issued, a new ribbon shall be issued to such person without charge therefor.

Sec. 3. That the appropriations for the enforcement and execution of the provisions of the Acts to promote the safety of employees and travelers upon railroads are hereby made available for carrying out the provisions of this Act.

Public, No. 98, approved February 23, 1905 (33 Statutes at Large, 743).

APPENDIX 22.

Regulations Governing the Award of Life-Saving Medals under the Medal of Honor Act.

Made by the President of the United States on March 29, 1905.

1. Applications for medals under this act should be addressed to and filed with the Interstate Commerce Commission, at the city of Washington, D. C. Satisfactory evidence of the facts upon which the application is based must be filed in each case. This evidence should be in the form of affidavits made by eyewitnesses, of good repute and standing, testifying of their own knowledge. The opinion of witnesses that the person for whom an award is sought acted with extreme daring and endangered his life is not sufficient, but the affidavits must set forth the facts in detail and show clearly in what manner and to what extent life was endangered and extreme daring exhibited. The railroad upon which the incident occurred, the date, time of day, condition of the weather, the

names of all persons present when practicable, and other pertinent circumstances should be stated. The affidavits should be made before an officer duly authorized to administer oaths and be accompanied by the certificate of some United States official of the district in which the affiants reside, such as a judge or clerk of United States court, district attorney, or postmaster, to the effect that the affiants are reputable and credible persons. If the affidavits are taken before an officer without an official seal his official character must be certified by the proper officers of a court of record under the seal thereof.

2. Applications for medals, together with all affidavits and other evidence received in connection therewith, shall be referred to a committee of five persons, consisting of the secretary of the Commission, the chief inspector of safety appliances, two inspectors of safety appliances designated by the Commission, and the clerk of the safety-appliance examining board, who shall act as clerk of the committee. This committee shall carefully consider each application presented and, after thoroughly weighing the evidence, shall prepare an abstract or brief covering the case and file the same, together with the committee's recommendation, with the Commission, which brief and recommendation shall be transmitted by the Commission to the President for his approval. The committee may, with the approval of the Commission, direct any inspector of safety appliances in the employ of the Commission to proceed to the locality where the service was performed for which a medal is claimed, and make a personal investigation and report upon the facts of the case, which report shall be filed and made a part of the evidence considered by the committee.

3. Upon final approval of the committee's recommendation by the President the Commission shall take such measures to carry the recommendation into effect as the President may direct.

4. The Commission shall cause designs to be prepared for the medal, rosette, and ribbon provided for by the act, which designs shall be submitted to the President for his approval.

APPENDIX 23.

Lake Erie and Ohio River Ship Canal Act.

AN ACT To incorporate the Lake Erie and Ohio River Ship Canal, to define the powers thereof, and to facilitate interstate commerce.

* * * * *

Sec. 17. That the said canals shall be open to the use and navigation of all suitable and proper vessels or other water craft, by whomsoever owned or operated, upon fair and equal terms, conditions, rates, tolls, and charges; and the said company may demand, take, and recover for its own proper use, for all persons and things of whatsoever description transported upon the said canals, feeders, and other works, or in vessels and craft using the same, just and reasonable charges, rates, and tolls; but all such charges, rates, and tolls shall be equal to all persons, vessels, and goods under certain classifications to be established by the company and approved by the Interstate Commerce Commission; and no rebate, reduction, drawback, or discrimination of any sort on such charges, rates, and tolls shall ever be made directly or indirectly. And the said charges, rates, and tolls for the ensuing year shall be fixed, published, and posted on or in every place where they are to be collected, on or before the fifteenth day of February of each year, and shall not be changed except after thirty days' public notice, which notice shall plainly state the changes proposed to be made in the charges, rates, and tolls then in force and the time when the changed charges, rates, and tolls will go into effect; and the proposed changes shall be shown by printing new schedules or shall be plainly indicated upon the schedules in force at the time and kept open to public inspection: *Provided*, That the Interstate Commerce Commission may, in its discretion and for good cause shown, allow changes upon less notice than herein specified or modify the foregoing requirements in respect to publishing and posting of such schedules, either in particular instances or by a general order applicable to special or peculiar circumstances or conditions.

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Public No. 402, approved June 30, 1906 (34 Statutes at Large, 809).

APPENDIX 24.

Hours of Service Act.

AN ACT To promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of this Act shall apply to any common carrier or carriers, their officers, agents, and employees, engaged in the transportation of passengers or property by railroad in

the District of Columbia or any Territory of the United States, or from one State or Territory of the United States or the District of Columbia to any other State or Territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States. The term "railroad" as used in this Act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "employees" as used in this Act shall be held to mean persons actually engaged in or connected with the movement of any train.

Sec. 2. That it shall be unlawful for any common carrier, its officers or agents, subject to this Act to require or permit any employee subject to this Act to be or remain on duty for a longer period than sixteen consecutive hours, and whenever any such employee of such common carrier shall have been continuously on duty for sixteen hours he shall be relieved and not required or permitted again to go on duty until he has had at least ten consecutive hours off duty; and no such employee who has been on duty sixteen hours in the aggregate in any twenty-four-hour period shall be required or permitted to continue or again go on duty without having at least eight consecutive hours off duty: *Provided*, That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week: *Provided further*, The Interstate Commerce Commission may after full hearing in a particular case and for good cause shown extend the period within which a common carrier shall comply with the provisions of this proviso as to such case.

Sec. 3. That any such common carrier, or any officer, or agent thereof, requiring or permitting any employee to go,

be, or remain on duty in violation of the second section hereof, shall be liable to a penalty of not to exceed five hundred dollars for each and every violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of one year from the date of such violation; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge. In all prosecutions under this Act the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents: *Provided*, That the provisions of this Act shall not apply in any case of casualty or unavoidable accident or the act of God; nor where the delay was the result of a cause not known to the carrier or its officer or agent in charge of such employee at the time said employee left a terminal, and which could not have been foreseen: *Provided further*, That the provisions of this Act shall not apply to the crews of wrecking or relief trains.

Sec. 4. It shall be the duty of the Interstate Commerce Commission to execute and enforce the provisions of this Act, and all powers granted to the Interstate Commerce Commission are hereby extended to it in the execution of this Act.

Sec. 5. That this Act shall take effect and be in force one year after its passage.

Public No. 274, approved March 4, 1907, 11.50 a. m. (34 Statutes at Large, 1415).

APPENDIX 25.

Ash Pan Act.

AN ACT To promote the safety of employees on railroads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after the first day of January, nineteen hundred and ten, it shall be unlawful for any common carrier engaged in interstate or foreign commerce by railroad to use any locomotive in moving interstate or foreign traffic, not equipped with an ash pan, which can be dumped or emptied and

cleaned without the necessity of any employee going under such locomotive.

Sec. 2. That on and after the first day of January, nineteen hundred and ten, it shall be unlawful for any common carrier by railroad in any Territory of the United States or the District of Columbia to use any locomotive not equipped with an ash pan, which can be dumped or emptied and cleaned without the necessity of any employee going under such locomotive.

Sec. 3. That any such common carrier using any locomotive in violation of any of the provisions of this Act shall be liable to a penalty of two hundred dollars for each and every such violation, to be recovered in a suit or suits to be brought by the United States district attorney in the district court of the United States having jurisdiction in the locality where such violation shall have been committed; and it shall be the duty of such district attorney to bring such suits upon duly verified information being lodged with him of such violation having occurred; and it shall also be the duty of the Interstate Commerce Commission to lodge with the proper district attorneys information of any such violations as may come to its knowledge.

Sec. 4. That it shall be the duty of the Interstate Commerce Commission to enforce the provisions of this Act, and all powers heretofore granted to said Commission are hereby extended to it for the purpose of the enforcement of this Act.

Sec. 5. That the term "common carrier" as used in this Act shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier

Sec. 6. That nothing in this Act contained shall apply to any locomotive upon which, by reason of the use of oil, electricity, or other such agency, an ash pan is not necessary.

Public No. 165, approved May 30, 1908 (35 Statutes at Large, 476).

APPENDIX 26.

Transportation of Explosives Act.

Act of March 4, 1909, effective January 1, 1910.

By an act entitled "An act to codify, revise, and amend the penal laws of the United States," approved March 4, 1909, to take effect and be in force on and after the first day of January, 1910, the act entitled "An act to promote the safe transportation in interstate commerce of explosives and other dangerous articles, and to provide penalties for its violation,"

approved May 30, 1908, is repealed, and the following sections of said act to codify, revise, and amend the penal laws of the United States are substituted therefor:

Sec. 232. It shall be unlawful to transport, carry, or convey, any dynamite, gunpowder, or other explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between a place in any State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier, which vessel or vehicle is carrying passengers for hire: *Provided*, That it shall be lawful to transport on any such vessel or vehicle small arms, ammunition in any quantity, and such fuses, torpedoes, rockets, or other signal devices, as may be essential to promote safety in operation, and properly packed and marked samples of explosives for laboratory examination, not exceeding a net weight of one-half pound each, and not exceeding twenty samples at one time in a single vessel or vehicle; but such samples shall not be carried in that part of a vessel or vehicle which is intended for the transportation of passengers for hire: *Provided further*, That nothing in this section shall be construed to prevent the transportation of military or naval forces with their accompanying munitions of war on passenger equipment vessels or vehicles.

Sec. 233. The Interstate Commerce Commission shall formulate regulations for the safe transportation of explosives, which shall be binding upon all common carriers engaged in interstate or foreign commerce which transport explosives by land. Said Commission, of its own motion, or upon application made by any interested party, may make changes or modifications in such regulations, made desirable by new information or altered conditions. Such regulations shall be in accord with the best known practicable means for securing safety in transit, covering the packing, marking, loading, handling while in transit, and the precautions necessary to determine whether the material when offered is in proper condition to transport. Such regulations, as well as all changes or modifications thereof, shall take effect ninety days after their formulation and publication by said Commission and shall be in effect until reversed, set aside, or modified.

Sec. 234. It shall be unlawful to transport, carry, or convey, liquid nitroglycerine, fulminate in bulk in dry country and

other like explosive, between a place in a foreign country and a place within or subject to the jurisdiction of the United States, or between place in one State, Territory, or District of the United States, or a place noncontiguous to but subject to the jurisdiction thereof, and a place in any other State, Territory, or District of the United States, or place noncontiguous to but subject to the jurisdiction thereof, on any vessel or vehicle of any description operated by a common carrier in the transportation of passengers or articles of commerce by land or water.

Sec. 235. Every package containing explosives or other dangerous articles when presented to a common carrier for shipment shall have plainly marked on the outside thereof the contents thereof; and it shall be unlawful for any person to deliver, or cause to be delivered, to any common carrier engaged in interstate or foreign commerce by land or water, for interstate or foreign transportation, or to carry upon any vessel or vehicle engaged in interstate or foreign transportation, any explosive, or other dangerous article, under any false or deceptive marking, description, invoice, shipping order, or other declaration, or without informing the agent of such carrier of the true character thereof, at or before the time such delivery or carriage is made. Whoever shall knowingly violate, or cause to be violated, any provision of this section, or of the three sections last preceding, or any regulation made by the Interstate Commerce Commission in pursuance thereof, shall be fined not more than two thousand dollars, or imprisoned not more than eighteen months, or both.

Sec. 236. When the death or bodily injury of any person is caused by the explosion of any article named in the four sections last preceding, while the same is being placed upon any vessel or vehicle to be transported in violation thereof, or while the same is being so transported, or while the same is being removed from such vessel or vehicle, the person knowingly placing, or aiding or permitting the placing, of such articles upon any such vessel or vehicle, to be so transported, shall be imprisoned not more than ten years.

Public, No. 350, approved March 4, 1909, effective January 1, 1910.

APPENDIX 27.

District of Columbia Street Railways Act.

AN ACT Authorizing certain extensions to be made of the lines of the Anacostia and Potomac River Railroad Company, the Washington Railway and Electric Company, the City and Suburban Rail-

way of Washington, and the Capital Traction Company, in the District of Columbia, and for other purposes.

* * * * *

Sec. 12. That existing transfer arrangements between the Washington Railway and Electric Company and the Metropolitan Coach Company, a corporation of the District of Columbia, shall not be terminated, except by authority of Congress; and unless said Metropolitan Coach Company shall, within one year after the passage of this Act, substitute motor vehicles to be approved by the Commissioners of the District of Columbia, for the herdies now used by it, its right to operate its line shall cease and determine: *Provided further*, That all transfers issued by the Metropolitan Coach Company shall be properly dated and punched as to time limit as provided by rules and regulations to be made, altered, and amended from time to time by the Interstate Commerce Commission, and that unless said transfers are so dated and punched the Washington Railway and Electric Company shall not be required to receive them.

* * * * *

Sec. 16. That every street railroad company or corporation owning, controlling, leasing or operating one or more street railroads within the District of Columbia shall on each and all of its railroads supply and operate a sufficient number of cars, clean, sanitary, in good repair, with proper and safe power, equipment, appliances and service, comfortable and convenient, and so operate the same as to give expeditious passage, not to exceed fifteen miles per hour within the city limits or twenty miles per hour in the suburbs, to all persons desirous of the use of said cars, without crowding said cars. The Interstate Commerce Commission is hereby given power to require and compel obedience to all of the provisions of this section, and to make, alter, amend and enforce all needful rules and regulations to secure said obedience; and said Commission is given power to make all such orders and regulations necessary to the exercise of the powers herein granted to it as may be reasonable and proper; and such railroad companies or corporations, their officers and employees, are hereby required to obey all the provisions of this section, and such regulations and orders as may be made by said Commission. Any such company or corporation, or its officers or employees, violating any provision of this section, or any of the said orders or regulations made by said Commission, or permitting such violation, shall be punished by a fine of not more than

one thousand dollars. And each day of failure or neglect on the part of such company or corporation, its officers or employees, to obey each and all of the provisions and requirements of this section, or the orders and regulations of the Commission made thereunder, shall be regarded as a separate offense.

Sec. 17. That prosecutions for violations of any of the provisions of this Act shall be on information of the Interstate Commerce Commission filed in the police court by or on behalf of the Commission.

* * * * *

Public No. 134, approved May 23, 1908 (35 Statutes at Large, 246).

APPENDIX 28.

AN ACT Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and ten, and for other purposes.

* * * * *

On and after the passage of this Act every corporation engaged in the manufacture and sale of gas or electricity in the District of Columbia shall open and keep a set of books in manner and form prescribed by the Interstate Commerce Commission.

* * * * *

Public No. 303, approved March 3, 1909 (36 Statutes at Large, —).

INDEX.

[References are to sections and paragraphs.]

A

ABATEMENT,

of jurisdiction of Commission where Territory is admitted as State, § 405, ¶ M.

ABSORPTION,

of switching charge,

on "dead" freight and assessment of same on live stock, § 366, ¶ B.

rules must be stated in published tariff, § 266, ¶ A.

where two smaller cars are furnished instead of car ordered by shipper, § 266, ¶ B.

not proper for consignee to pay charge and carrier to deduct from published rate, § 266, ¶ C.

discontinuance and subsequent resumption of absorption of charge as evidence of unreasonableness, § 266, ¶ D.

accrued claim not invalidated by subsequent cancellation of rule, § 427.

ACCESS,

of Commission to accounts, records and memoranda of carriers, § 696.

ACCIDENT REPORTS,

monthly reports of railway accidents, § 708, ¶ A.

reports not to be used as evidence against carrier, § 708, ¶ C.

Commission to prescribe form of, § 708, ¶ D.

purpose of, § 708, ¶ E.

in charge of operating division of Commission, § 14, ¶ A.

common carriers required to file monthly reports, § 14, ¶ A.

examined by Commission, § 14, ¶ A.

statistics from, compiled and published in monthly bulletin, § 14, ¶ A.

punishment of carrier for failure to file, § 769, ¶ B.

ACCOUNTS,

bureau of, under Commission, § 14, ¶ C.

division of accounts under Commission,

[References are to sections and paragraphs.]

ACCOUNTS—*Continued.*

- part of bureau of statistics and accounts § 14, ¶ C.
- in charge of development of uniform system of accounting for carriers, § 14, ¶ C.
- supervises board of examiners, § 14, ¶ C.
- prescribes and promulgates accounting rules, § 14, ¶ C.
- uniform system of keeping,
 - power of Commission to prescribe, § 694, ¶ A.
 - uniform rules prescribed, § 694, ¶ B.
- jurisdiction of Commission,
 - power to prescribe form of, § 695.
 - power to prescribe uniform system of keeping, § 694, ¶ A.
 - access to, § 696.
- access of Commission to, § 696.
- carrier may not keep other than those prescribed, § 697.
- Commission may employ special examiners to inspect, § 698.
- destruction of, when permissible, § 702, ¶ A.
- punishment by forfeiture for,
 - failure to keep records as prescribed by Commission, § 770.
 - failure to allow inspection of, § 770.
 - mutilation or destruction of, § 771.
 - false entries in, § 771.
 - keeping other records than those prescribed, § 771.

ACCURACY,

- impossible in classification of freight, § 68.

ACKNOWLEDGMENTS,

- before whom acknowledgments to reports may be taken, § 706.

ACT TO REGULATE COMMERCE,

- See INTERSTATE COMMERCE ACT.

ADDRESS,

- of Commission,
 - principal, § 8, § 806, Rule XXI.
 - letters, § 8, § 806, Rule XXI.
 - telegrams, § 8, § 806, Rule XXI.
 - tariffs for filing, § 8, § 806, Rule XXI.

ADJACENT,

- "adjacent" foreign country defined, § 31, ¶ C.

ADJOURNMENT,

- rules of Commission, as to, § 806, Rule VIII.

[References are to sections and paragraphs.]

ADMINISTRATIVE RULINGS,

of Commission, § 16, ¶ A.

ADVANCEMENTS,

repaying advancements made by shipper for construction of switch track, § 304.

ADVANTAGES,

See DISCRIMINATIONS, PREFERENCES AND ADVANTAGES; REBATES AND CONCESSIONS; FREE AND REDUCED-RATE PASSENGER TRANSPORTATION; FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY.

ADVERTISING,

may not be lawfully exchanged for transportation, § 300, ¶ B.

AFFIRMATIONS,

power of Commission to administer, § 786.

AGENTS,

special, of Commission,

inspects accounts, records and memoranda of carriers, § 13, ¶ A.

power to administer oaths, § 13, ¶ B.

power to examine witnesses, § 13, ¶ B.

power to receive evidence, § 13, ¶ B.

punishment for divulging information without authority, § 13, ¶ C.

carrier bound by acts and representations of its agents in furnishing cars, § 166.

acts of, deemed acts of carrier, § 764.

relief of agent for uncollected undercharge does not relieve carrier, § 402.

error by carrier's agent causing passenger to pay additional charges, § 581.

overcharge caused by error of carrier's agent in routing, § 424, ¶ I. of common carriers,

entitled to free transportation, § 598, ¶ A.

families of, entitled to free passes, § 598, ¶ A.

household effects of, may be transported free, § 598, ¶ D.

of railroad receivers, entitled to free passes, § 598, ¶ E.

tariffs issued and filed by,

See FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

AGREEMENTS,

See CONTRACTS; CONTRACTS BETWEEN CARRIERS; DOCUMENTARY EVIDENCE; POOLING CONTRACTS.

[References are to sections and paragraphs.]

ALASKA,

rail and water carriers in Alaska, not subject to jurisdiction of Commission, § 63.

ALLOWANCES,

elevation service,

where owner of elevator has no interest in grain, § 241, ¶ A.

where owner of elevator is owner of grain, § 241, ¶ B.

to owners for services rendered or instrumentalities furnished must be just and reasonable, § 327.

for delivery and receipt of property, § 328.

jurisdiction of Commission over allowances to owner of property transported, § 329.

weight of stakes, racks, and blocks on flat and gondola cars, § 330.

use of private cars, § 331.

shrinkage in weight of shipments while in transit, § 333.

grain doors furnished by shipper, § 334.

right of terminal railroad to enjoy division of through rate, § 337.

sole ownership of terminal road creates no presumption of illegality of transaction, § 338.

“tap lines,”

illegal, § 339.

as medium of rebating, § 395.

division of rate to boat line controlled by shipper, § 340.

services performed and instrumentalities furnished for which owner is not entitled to compensation, § 341.

shipper not entitled to allowances for plant facilities, § 341.

of rebate, does not vitiate bill of lading, § 122.

to shippers for services rendered or instrumentalities furnished must not exceed actual cost, § 396.

for use of private track of shipper as medium for rebating, § 397.

allowance for loss by leakage and evaporation of oil in tank cars, § 364, ¶ E.

rules and regulations governing, must be shown in published tariffs, § 461.

penalty of shipper for obtaining allowance by false representation, § 761.

AMENDMENTS,

rule as to amending pleadings, § 806, Rule VII.

AMENDMENTS TO TARIFFS,

See PASSENGER TARIFFS OR FARE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

[References are to sections and paragraphs.]

AMMUNITION,

regulations for transportation of, § 455.

ANNUAL REPORTS,

of carriers to Commission,

Commission authorized to require, § 703, ¶ A.

Commission empowered to prescribe form of, § 703, ¶ B.

copies of to be preserved as public records, § 713.

punishment for failure to file, § 769, ¶ A.

Commission may require any information desired, § 703, ¶ C.

what reports shall contain, § 703, ¶ D.

date for filing, § 703, ¶ E.

Commission may extend time for filing, § 703, ¶ F.

of Commission to Congress, § 20.

ANSWER,

rule as to, § 806, Rule IV.

ANTECEDENTS, Historical.

facts leading to passage of Act to Regulate Commerce, pp. 1-17.

ANY-QUANTITY RATES,

legality of, § 93, ¶ D.

APPEARANCE,

of parties before Commission, § 793.

APPLES,

estimated weights on, § 152, ¶ D.

APPLICATION,

by carrier under proviso clause of fourth section, rule as to, § 806,
Rule XIX.

for switch connection, § 346.

APPOINTMENT,

of members of Interstate Commerce Commission, § 3, ¶ C.

ARBITRARIES,

defined, § 87, ¶ E.

ARBITRATION,

Commission as a board of, § 804.

ARMY OFFICERS,

not entitled to free passes, § 609.

ARTIFICIAL GAS,

transportation of, by pipe line, excepted from provisions of Inter-
state Commerce Act, § 45.

[References are to sections and paragraphs.]

ASH-PAN ACT,

penalty for violation of, § 780.

ASSIGNMENT,

of overcharge claim, § 434.

ASTRAY SHIPMENTS,

demurrage on, § 292.

ATTENDANCE AND TESTIMONY OF WITNESSES,

fees of witnesses, § 795, ¶ L.

power of Commission to require, § 795, ¶ A.

Commission may invoke aid of Courts, § 795, ¶ B.

penalty for disobedience to order of Court, § 795, ¶ C.

testimony by deposition,

may be taken by, § 795, ¶ D.

Commission may order taken, § 795, ¶ E.

before whom taken, § 795, ¶ F.

reasonable notice must be given, § 795, ¶ G.

compulsory attendance, § 795, ¶ H.

manner of taking, § 795, ¶ I.

when witness is in foreign country, § 795, ¶ J.

depositions must be filed with Commission, § 795, ¶ K.

fees of witnesses and magistrates, § 795, ¶ L.

claim that testimony will tend to criminate will not excuse, § 795,

¶ M.

immunity to testifying witnesses, § 795, ¶ N.

penalty for neglect or refusal to attend and testify, § 773.

rule as to summoning and attendance of witnesses, § 806, Rule XII.

free passes to witnesses attending legal investigation in which

carrier is interested, § 594.

ATTORNEYS-AT-LAW,

See COUNSEL.

of common carriers, entitled to free passes, § 594.

families of, not entitled to free passes, § 598, ¶ C.

AUTOMOBILES,

not subject to control of Commission, § 58, ¶ D.

B

BAGGAGE,

free baggage with mileage tickets, § 314.

of passengers, § 561.

regulations governing,

must be shown in published tariff, § 638, ¶ N.

[References are to sections and paragraphs.]

BAGGAGE—Continued.

duty of carriers to prescribe reasonable regulations governing,
§ 561, ¶ A.

discrimination in handling, § 561, ¶ B.

BAGGAGE AGENTS,

free passes to, § 594.

BAGGAGE COMPANIES,

officers and employees of, not entitled to free passes, § 616, ¶ C.

BAGGAGE WAGONS,

not subject to Act to Regulate Commerce, § 58, ¶ D.

transportation by, not subject to control of Commission, § 58, ¶ D.

BASING POINTS,

system in rate-making, § 87, ¶ J.

carriers may specify, in constructing combination rate, § 97, ¶ D.

BASING TARIFFS,

defined, § 634, ¶ D.

form of, § 636, ¶ A, § 467.

size of, § 634, ¶ A.

must be specific, §§ 480, 643.

express company, § 526.

BEES,

in hives, passes to caretakers of, § 601, ¶ E.

BELT RAILROADS,

See TERMINAL RAILROADS.

subject to jurisdiction of Commission, when, § 41.

BILLING,

declaring false billing as violation of statute, § 393.

penalty for false billing,

by carrier, § 760.

by shipper, § 761.

BILL-OF-LADING WEIGHTS,

weights marked on bill of lading not conclusive, § 146.

right of shipper to rely upon, § 147.

BILLS OF LADING,

carrier receiving property for interstate transportation required to
issue, § 120.

part of bill of lading relating to freight rate, § 121.

[References are to sections and paragraphs.]

BILLS OF LADING—Continued.

- allowance of rebate does not vitiate, § 122.
- provisions as to marine insurance over rail-and-water routes, § 124.
- receiving carrier required to issue, § 120.
- Commission without power to prescribe form of, § 125.
- uniform bills of lading, § 126.
- “straight” bills of lading, § 126.
- “order” bills of lading, § 126.
- “through” bills of lading, § 128.
- covering export and import traffic, § 127.
- manner of contracting for transportation, § 129.
- determines character of traffic as interstate commerce, § 28, ¶ C.
- conditions embodied in, § 126.
- weight marked on bill of lading not conclusive, § 146.
- right of shipper to rely upon bill-of-lading weight, § 147.
- rate inserted in bill of lading at variance with published rate, § 242.
- routing instructions should be shown in, § 187.
- regulations and practices affecting, § 123.

“BLANKET” RATES,

- reasonableness of, § 93, ¶ AA.

BLASTING CAPS,

- regulations for transportation of, § 455.

BLOCKS,

- allowance for weight of, on flat or gondola cars, § 330.

BOARD OF ARBITRATION,

- Commission as a, § 804.

BOARD OF EXAMINERS,

- under Commission,
 - part of bureau of statistics and accounts, § 14, ¶ C.
 - composed of expert accountants, § 14, ¶ C.
 - in charge of chief examiner, § 14, ¶ C.
 - holds general and special examinations, § 14, ¶ C.
 - supervises and audits accounts of carriers, § 14, ¶ C.

BOAT LINE,

- controlled by shipper, division of rate to, § 340.

BOND,

- to indemnify carrier against loss in establishment of through route, § 177.

[References are to sections and paragraphs.]

BOOKS,

See DOCUMENTARY EVIDENCE.

BRICK,

different rates should not be applied on different kinds of, § 89, ¶ R.

BRIDGES AND BRIDGE COMPANIES,

bridges included in term "railroad," § 43.

when subject to jurisdiction of Commission, § 43.

when not subject to jurisdiction of Commission, § 59.

independently operated, § 59, ¶ A.

where a railroad acquires the use of a bridge, § 59, ¶ B.

BRIEFS,

rule as to filing of, § 806, Rule XIV.

BULK OF ARTICLE,

as element in rate-making, § 89, ¶ G.

"BUNCHING" CARS,

effect on demurrage charges, § 297, ¶ D.

BUREAU OF STATISTICS AND ACCOUNTS,

under Commission,

has charge of reports of carriers, § 14, ¶ C.

publishes "Annual Report on Statistics of Railways in United States," § 14, ¶ C.

issues "Preliminary Report on Income of Railways in United States," § 14, ¶ C.

has supervision over railway accounts, § 14, ¶ C.

in charge of statistician, § 14, ¶ C.

departments of work, § 14, ¶ C.

BUSINESS MOTIVE OF SHIPPER,

rates fixed according to, unreasonable, § 93, ¶ V.

C**CABLE COMPANIES,**

subject to jurisdiction of Commission, § 39.

exchange of free transportation with other common carriers, § 606
passes or franks, § 326.

classification of messages permissible, § 365.

contracts with other common carriers, § 678.

CABS,

not subject to control of Commission, § 58, ¶ D.

[References are to sections and paragraphs.]

CALAMITOUS VISITATION,

free passes to provide relief from, § 594.

CANADIAN RATES AND FARES,

fares from points in United States to Canada, § 558.

car-service charges on traffic to and from Canada, § 295.

CANCELLATION,

of storage charges as medium of rebating, § 398.

CANCELLATION OF TARIFFS,

See PASSENGER TARIFFS OR FARE SCHEDULES; EXPRESS COMPANY
FREIGHT TARIFFS OR RATE SCHEDULES; FREIGHT TARIFFS OR RATE
SCHEDULES.

CAR COMPANIES,

See PRIVATE CAR COMPANIES.

CAR-DOOR BOARDS,

See GRAIN DOORS.

rules governing allowance for, must be shown in published tariff,
§ 461, ¶ O.

CARETAKERS,

of certain kinds of property and certain classes of passengers, en-
titled to free transportation, § 601.

CAR-LIGHTING COMPANY,

testors and employes of not entitled to free passes, § 620.

CARLOAD LOTS,

See WEIGHTS AND WEIGHING; CONSOLIDATED CARLOADS.

difference between carload and less-than-carload lots in fixing
classification, § 607, ¶ H.

lower rate for carload than for less-than-carload quantities, § 93,
¶ B.

lower rate for trainloads than for carloads, unreasonable, § 93, ¶ E.
rates on carload shipments between points as to which no carload
rates are in effect, § 519, ¶ K.

CARMACK AMENDMENT,

to Hepburn Bill, constitutionality of, § 309.

CAR PER DIEM CHARGE,

origin of the car per diem rate for use of equipment, § 681.
rate, § 682.

[References are to sections and paragraphs.]

CAR PER DIEM CHARGE—*Continued.*

strictly a rental, § 683.

duty of carriers to provide compensation for use of foreign cars,
§ 684.

CARRIERS,

"common carrier," defined, § 26, Note 1.

synopsis of carriers subject to Act, § 27.

private carriers,

not subject to Interstate Commerce Act, § 58.

transportation by, not subject to jurisdiction of Commission,
§ 58.

"carrier," defined, § 26.

railroads,

term "railroad," defined, § 26.

includes what, § 26.

interstate, defined, § 32, ¶ A.

steam, § 32, ¶ B.

electric, § 32, ¶ C.

kind of motive power immaterial, § 32, ¶ B.

State railroads,

jurisdiction of Commission over roads engaged in inter-
state commerce, § 33.

when not subject to jurisdiction of Commission, § 33.

common control, management or arrangement for contin-
uous carriage or shipment, § 33, ¶ B.

syllabi of important cases decided prior to June 29, 1906,
affecting State railroads, § 33, ¶ C.

terminal or belt railroads,

jurisdiction of Commission over roads engaged in inter-
state commerce, § 41.

foreign railroads.

when subject to jurisdiction of Commission, § 42.

jurisdiction of Commission limited to United States, § 62.

steam railroads,

See RAILROADS.

electric railroads,

See RAILROADS.

ferries and ferry companies,

included within term "common carrier," § 44.

when subject to jurisdiction of Commission, § 44.

were not subject to Act to regulate Commerce prior to Hep-
burn Amendment of 1906, § 34.

switching companies,

[References are to sections and paragraphs.]

CARRIERS—*Continued.*

- not subject to jurisdiction of Commission when engaged in local transportation, § 61.
- sleeping-car companies,
 - included within term "common carrier," § 36.
 - subject to jurisdiction of Commission, § 36.
 - were not subject to Act to Regulate Commerce prior to Hepburn Amendment, § 36.
- fast freight lines, subject to jurisdiction of Commission, § 40.
- terminal railroads, subject to jurisdiction of Commission when engaged in interstate commerce, § 41.
- belt railroads, subject to jurisdiction of Commission when engaged in interstate commerce, § 41.
- foreign railroads,
 - when subject to jurisdiction of Commission, § 42.
 - jurisdiction of Commission limited to United States, § 62.
- bridges and bridge companies,
 - bridges included in term "railroad," § 43.
 - when subject to jurisdiction of Commission, § 43.
 - when not subject to jurisdiction of Commission, § 59.
 - independently operated, § 59, ¶ A.
 - where railroad company acquires use of bridge, § 59, ¶ B.
- pipe lines,
 - defined, § 45, Note.
 - subject to jurisdiction of Commission, when engaged in handling oil or other commodity, § 45.
 - carriers of water, and natural and artificial gas excepted, § 45.
- private car companies, subject to jurisdiction of Commission, § 46.
- intraterritorial common carriers, jurisdiction of Commission over, § 49.
- street railways, within District of Columbia, § 50.
- receivers of common carriers,
 - jurisdiction of Commission over, § 51.
 - may be sued without permission of court, § 51.
 - not criminally liable for violation of joint tariffs established prior to receivership, § 51.
- successors to common carriers, subject to jurisdiction of Commission, § 52.
- purchasers pendente lite,
 - subject to jurisdiction of Commission, § 52.
 - reorganization of company does not deprive Commission of jurisdiction, § 52.
- organization of carrier, nature of immaterial to attaching of Commission's jurisdiction, § 53.

[References are to sections and paragraphs.]

CARRIERS—Continued.

State railroads,

jurisdiction of Commission over roads engaged in interstate commerce, § 33.

when not subject to jurisdiction of Commission, § 56.

common control, management or arrangement for continuous carriage or shipment, § 33, ¶ B.

syllabi of important cases decided prior to Hepburn Amendment, § 33, ¶ C.

interstate railroads,

defined, § 32, ¶ A.

steam, § 32, ¶ B.

electric, § 32, ¶ C.

wagons, not subject to jurisdiction of Commission, § 58, ¶ A.

transfer wagons, not subject to jurisdiction of Commission, § 58, ¶ B.

omnibuses, not subject to jurisdiction of Commission, § 58, ¶ C.

stage-coaches, not subject to jurisdiction of Commission, § 58, ¶ D.

water carriers,

not subject to jurisdiction of Commission, § 57.

when subject to jurisdiction of Commission, §§ 47, 48.

inland water carriers,

not subject to jurisdiction of Commission, § 57.

when subject to jurisdiction of Commission, § 47.

ocean carriers,

not subject to jurisdiction of Commission, § 57.

when subject to jurisdiction of Commission, § 48.

baggage wagons, not subject to jurisdiction of Commission, § 58, ¶ D.

cabs, not subject to jurisdiction of Commission, § 58, ¶ D.

drays, not subject to jurisdiction of Commission, § 58, ¶ D.

carts, not subject to jurisdiction of Commission, § 54, ¶ D.

omnibuses, not subject to jurisdiction of Commission, § 58, ¶ D.

telephone companies,

subject to jurisdiction of Commission, § 38.

State telephone companies engaged in transmission of interstate messages, § 34.

cable companies, subject to jurisdiction of Commission, § 39.

telegraph companies,

subject to jurisdiction of Commission, § 37.

State telegraph companies engaged in transmission of interstate messages, § 34.

CARRIERS BY WATER.

See INLAND WATER CARRIERS; OCEAN CARRIERS.

REGULATION—77.

[References are to sections and paragraphs.]

CARRIERS OF PASSENGERS.

See PASSENGER FARES AND TICKETS; FREE AND REDUCED-RATE PASSENGER TRANSPORTATION; PASSENGER TARIFFS OR FARE SCHEDULES; DISCRIMINATIONS, PREFERENCES AND ADVANTAGES.

CARS,

See WEIGHTS AND WEIGHING; DEMURRAGE OR "CAR SERVICE;" CAR SHORTAGE; CAR SUPPLY AND DISTRIBUTION; INTERCHANGE OF TRAFFIC; PRIVATE CARS; COAL CARS; REFRIGERATOR CARS; PASSENGER CARS; CAR PER DIEM CHARGE.

method of acquiring equipment optional with carrier, § 160.

carrier cannot compel shipper to furnish, § 161.

cars owned by shippers,

use of in freight traffic, § 162.

transportation of cars owned by shippers, § 163, ¶ A.

carrier not bound to transport private car in unsafe condition, § 163, ¶ C.

carrier may refuse to handle, § 163, ¶ D.

carrier may lease cars from shippers, § 163, ¶ F.

carrier may lease equipment from one party and refuse to lease from another, § 163, ¶ G.

responsibility of carrier for equipment secured from foreign sources, § 163, ¶ J.

right of carrier to charge different rates for hauling different classes of private cars, § 163, ¶ K.

exclusive use of private cars by owners thereof, § 163, ¶ L.

right of shipper to use, § 164.

duty of carriers to exchange, interchange and return cars, § 667.

carriers bound by acts and representations of its agents in furnishing cars, § 166.

refusal of shipper to accept cars until claim for damages is paid, § 167.

carriers must send cars through or transfer enroute, § 170.

selection and preparation of, for transportation of explosives, § 455.

effect of "bunching" cars on demurrage charges, § 297, ¶ D.

return of cars to owner, § 171.

duty of carriers to provide compensation for use of foreign cars, § 684.

cars owned by private car companies,

carrier may arrange to haul cars of one company and refuse to handle those of another, § 163, ¶ H.

carriers may refuse to handle cars of express companies, § 163, ¶ I.

responsibility of carriers for equipment secured from foreign sources, § 163, ¶ J.



[References are to sections and paragraphs.]

CARS—*Continued.*

- confined to particular line, use of, § 194.
- transportation of trucks of cars destroyed on foreign lines, § 319.
- rules governing allowance for expense incurred in preparing cars
 - for shipment must be shown in published tariffs, § 461, ¶ O.
- rules covering distribution of cars among shippers,
 - fixed rules difficult, § 165, ¶ B.
 - meeting the demands of shipper, § 165, ¶ C.
 - failure of carrier, during car shortage, to furnish cars as rapidly as ordered, § 165, ¶ D.
 - furnishing cars to shippers in order in which they apply, § 165, ¶ E.
 - circumstances under which carriers were justified in refusing coal cars, § 165, ¶ F.
 - shipper cannot complain of reasonable rule of distribution, § 165, ¶ G.
 - distribution of private, system-fuel and foreign railroad cars during shortage, § 165, ¶ H.
 - rules for rating of coal mines, § 165, ¶ I.
 - carriers not required by Act to establish system of mine ratings, § 165, ¶ J.
- duty of carriers to furnish cars,
 - capable of carrying prescribed minima weights, § 133.
 - for transportation purposes,
 - in general, § 158, ¶ A.
 - refrigerator cars, § 158, ¶ B.
 - coal cars, § 158, ¶ C.
 - in suitable condition for use,
 - freight cars, § 159, ¶ A.
 - passenger cars, § 159, ¶ B.
 - carriers bound by acts and representations of agents in furnishing cars, § 166.
- jurisdiction of Interstate Commerce Commission,
 - over distribution of cars in general, § 172, ¶ A.
 - primary jurisdiction of Commission over regulations governing distribution of cars, § 172, ¶ B.
 - no authority to order establishment of system of mine ratings, § 172, ¶ C.
 - no authority to compel carriers to furnish particular kind of equipment, § 172, ¶ D.
 - no jurisdiction over delays in furnishing cars, § 172, ¶ E.
 - no jurisdiction over car shortage, § 172, ¶ F.
 - jurisdiction to award reparation for damages resulting from discrimination in furnishing, § 405, ¶ K.

[References are to sections and paragraphs.]

CARS—*Continued.*

car shortage,

causes of, § 174.

relation between shortage of cars and an insufficiency in other facilities, § 175.

proposed remedies for car shortage,

in general, § 176, ¶ A.

reciprocal car-demurrage law as remedy, § 176, ¶ B.

loading capacity of cars, duty of carrier to prescribe minima weights consistent with, § 134.

right of initial carrier to furnish any available equipment in absence of definite agreement with shipper, § 142.

light loading of new cars on first trip, § 151.

new cars on first trip, light loading of, § 151.

rules to govern where different capacity cars are furnished than ordered by shipper, § 153.

State regulation of carrier's duty to furnish cars, § 173.

private car, defined, § 289, ¶ A.

refrigerator cars,

duty of carriers to furnish, § 158, ¶ B.

carriers may contract with car-line company for, § 204.

sufficiency of car, § 205, ¶ A.

coal cars, duty of carriers to furnish, § 158, ¶ C.

use of private cars in freight traffic, § 162.

transportation of cars owned by shipper, § 163, ¶ A.

carrier not bound to transport private car in unsafe condition, § 163, ¶ C.

carrier may refuse to handle private cars, § 163, ¶ D.

carrier may lease cars from shippers, § 163, ¶ F.

carrier may lease equipment from one party and refuse to lease from another, § 163, ¶ G.

carrier may arrange to haul cars of one car company and refuse to haul those of another, § 163, ¶ H.

carriers may refuse to handle cars of express companies, § 163, ¶ I.

responsibility of carriers for equipment secured from foreign sources, § 163, ¶ J.

right of carrier to charge different rates for hauling different classes of private cars, § 163, ¶ K.

exclusive use of private cars by owners thereof, § 163, ¶ L.

right of shippers to use private cars, § 164.

fixed rules of distribution difficult, § 165, ¶ B.

meeting the demands of shippers, § 165, ¶ C.

failure of carrier, during car shortage, to furnish cars as ordered, § 165, ¶ D.

[References are to sections and paragraphs.]

CARS—Continued.

furnishing cars to shippers in order in which they apply, § 165, ¶ E.
circumstances under which carriers are justified in refusing coal cars, § 165, ¶ F.

shippers cannot complain of reasonable rule of distribution, § 165, ¶ G.

distribution of private, system-fuel and foreign railroad cars during shortage, § 165, ¶ H.

rules for rating of coal mines, § 165, ¶ I.

carriers not required by law to establish a system of mine ratings, § 165, ¶ J.

causes of car shortage, § 174.

relation between shortage of cars and an insufficiency of other facilities, § 175.

proposed remedies for car shortage,

in general, § 176, ¶ A.

reciprocal car-demurrage law as remedy, § 176, ¶ D.

shortage of cars,

See CAR SHORTAGE.

right of initial carrier to furnish any available equipment in absence of definite agreement with shipper, § 142.

light loading of new cars on first trip, § 151.

new cars on first trip, light loading of, § 151.

right of carrier to assess penalty for excess loading, § 150.

duty of carrier to furnish cars capable of carrying minima weights, § 133.

system-fuel cars, distribution of during car shortage, § 165, ¶ H.

foreign railroad cars, distribution of during car shortage, § 165, ¶ H.

responsibility of carrier for failure to furnish proper cars to which rates apply, § 431.

CAR-SERVICE,

See DEMURRAGE, OR "CAR-SERVICE."

CAR SHORTAGE,

failure of carrier, during shortage, to furnish cars as rapidly as ordered, § 165, ¶ D.

jurisdiction of Commission,

none over car shortage, § 172, ¶ F.

none over delay in furnishing cars, § 172, ¶ E.

causes of, § 174.

relation between shortage in cars and an insufficiency in other facilities, § 175.

proposed remedies for,

[References are to sections and paragraphs.]

CAR SHORTAGE—Continued.

in general, § 176, ¶ A.

reciprocal car-demurrage law as remedy, § 176, ¶ B.

CAR SUPPLY AND DISTRIBUTION,

See CARS; CAR SHORTAGE; CAR PER DIEM CHARGE.

State regulation of carrier's duty to furnish, § 173.

transportation of cars owned by shipper, § 163, ¶ A.

carrier not bound to transport a private car in unsafe condition,
§ 163, ¶ C.

carrier may refuse to handle private cars, § 163, ¶ D.

carriers may lease cars from shippers, § 163, ¶ F.

carriers may lease equipment from one party and refuse to lease
from others, § 163, ¶ G.

carrier may arrange to haul cars of one car company and refuse
to haul those of another, § 163, ¶ H.

carriers may refuse to handle cars of express companies, § 163, ¶ I.

responsibility of carriers for equipment secured from foreign
sources, § 163, ¶ J.

right of carrier to charge different rates for hauling different
classes of private cars, § 163, ¶ K.

exclusive use of private cars by owners thereof, § 163, ¶ L.

right of shippers to use private cars, § 164.

duty of carriers to furnish cars for transportation,

in general, § 158, ¶ A.

refrigerator cars, § 158, ¶ B.

coal cars, § 158, ¶ C.

duty of carriers to furnish cars in suitable condition for use,

freight cars, § 159, ¶ A.

passenger cars, § 159, ¶ B.

carriers cannot compel shippers to furnish cars for transporta-
tion purposes, § 161.

use of private cars in freight traffic, § 162.

fixed rules of distribution difficult, § 165, ¶ B.

meeting the demands of shippers, § 165, ¶ C.

failure of carrier, during car shortage, to furnish cars as rapidly
as ordered, § 165, ¶ D.

furnishing cars to shippers in order in which they apply, § 165, ¶ E.

circumstances under which carriers were justified in refusing cars
to shippers, § 165, ¶ F.

shippers cannot complain of reasonable rule of distribution, § 165,
¶ G.

distribution of private, system-fuel and foreign railroad cars, dur-
ing car shortage, § 165, ¶ H.

[References are to sections and paragraphs.]

CAR SUPPLY AND DISTRIBUTION—*Continued.*

- private cars,
 - use of in freight traffic, § 162.
 - distribution of, § 165, ¶ H.
- system-fuel cars, distribution of, § 165, ¶ H.
- foreign railroad cars, distribution of, § 165, ¶ H.
- rules for rating of coal mines, § 165, ¶ I.
- carriers not required by law to establish a system of mine ratings, § 165, ¶ J.
- carrier bound by acts and representations of agents in furnishing cars, § 166.
- refusal of shipper to accept cars until claim for damages is paid, § 167.
- carriers must send cars through or transfer enroute, § 170.
- jurisdiction of Commission,
 - in general, § 172, ¶ A.
 - primary jurisdiction over regulations governing distribution, § 172, ¶ B.
 - no authority to order establishment of system of mine ratings, § 172, ¶ C.
 - no authority to compel carrier to furnish particular kind of equipment, § 172, ¶ D.
 - no jurisdiction over delay in furnishing cars, § 172, ¶ E.
 - no jurisdiction over car shortage, § 172, ¶ F.
- discrimination in distribution of cars,
 - duty of carrier to treat shippers alike in distribution, § 369, ¶ A.
 - coal cars must be furnished without favoritism, § 369, ¶ B.
 - shipper may not complain of reasonable rule of distribution, § 369, ¶ C.
 - discrimination in enforcing embargo, § 369, ¶ D.
- damages for discrimination in furnishing, jurisdiction of Commission to award, § 405, ¶ K.

CARTS,

- not subject to control of Commission, § 58, ¶ D.

CATTLE,

- Commission no authority to award damages for shrinkage in transit, § 405, ¶ G.

CERTIFICATES,

- for cars intended to transport explosives, § 455.

CERTIFICATE PLAN,

- issuance of round-trip passenger tickets on, § 565.

[References are to sections and paragraphs.]

CERTIFIED COPIES,

of reports as prima facie evidence, § 714.

of tariffs as prima facie evidence, § 509.

CHAIRMAN,

of Commission,

how elected, § 4.

first, § 4.

present, § 4.

CHARGES,

See FREIGHT RATES AND CHARGES; FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER FARES AND TICKETS; PASSENGER TARIFFS OR FARE SCHEDULES; FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY; FREE AND REDUCED-RATE PASSENGER TRANSPORTATION; LONG-AND-SHORT-HAUL-CLAUSE; CLASSIFICATION OF FREIGHT; CLASSIFICATIONS; DEMURRAGE OR "CAR SERVICE;" EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

CHARITIES,

free and reduced-rate transportation for, § 312.

caretakers of property transported for, § 601, ¶ H.

free passes to inmates of, § 594.

CHARITY WORKERS,

free passes to, § 603, ¶ A.

CHARTERED TRAINS,

for use of passengers, § 566.

CHINESE,

unlawful to grant reduced-fare transportation for deportation of, § 618.

CIRCULARS,

of Commission, distribution of official, § 22.

announcing compliance with orders of court, §§ 541, 650, 497.

CIVIL RIGHTS,

discrimination between white and colored passengers, § 381.

CLAIMS,

See DAMAGES AND REPARATION.

division of, under Commission, § 14, ¶ D.

refusal of shipper to accept cars until claim for damages is paid, § 167.

for damages cannot be based on unlawful privilege, § 415.

delivering carrier must investigate before paying, § 436.

[References are to sections and paragraphs.]

CLAIMS—*Continued.*

penalty for shipper obtaining payment for damages by false representation, § 761.

CLASS RATES.

defined, § 87.

alternative use of class or commodity rates, § 472.

CLASSIFICATION OF FREIGHT.

See CLASSIFICATIONS.

most practical way of making rates, § 64.

elements to be considered in fixing,

in general, § 67, ¶ A.

value of service against cost of service principle, § 67, ¶ B.

comparison of different articles, § 67, ¶ C.

value of article, § 67, ¶ D.

cost of production, § 67, ¶ E.

volume of traffic, § 67, ¶ F.

cost of service, § 67, ¶ G.

difference between carload and less-than-carload lots, § 67, ¶ H.

less-than-carload lots, § 67, ¶ I.

character of package, § 67, ¶ J.

competition as factor, § 67, ¶ K.

shipper's description, § 67, ¶ L.

character of package, as element, § 67, ¶ J.

competition, as factor, § 67, ¶ K.

package in which goods are shipped, as element, § 67, ¶ J.

comparison of different articles, § 67, ¶ C.

value of service, as element,

in general, § 67, ¶ D.

commercial as distinguished from intrinsic value, § 67, ¶ D.

commercial value of article, as element, § 67, ¶ D.

intrinsic value of article, as element, § 67, ¶ D.

cost of production, as element, § 67, ¶ E.

production, cost of, as element, § 67, ¶ E.

volume of traffic, as element, § 67, ¶ F.

cost of service, as element, § 67, ¶ G.

difference between carload and less-than-carload lots, § 67, ¶¶ H, I.

less-than-carload lots, § 67, ¶ I.

accuracy in classification,

classification necessarily general, § 68, ¶ A.

minuteness in classification, § 68, ¶ B.

generality of classification, § 68, ¶ A.

minuteness in classification, § 68, ¶ B.

[References are to sections and paragraphs.]

CLASSIFICATION OF FREIGHT—*Continued.*

- kind of package used, § 71.
- prosperity of shipper not proper consideration, § 70.
- change of, § 73.
- as means of increasing revenue, § 74.
- high explosives, § 77.
- revenue, classification as means of increasing, § 74.
- exact classification impossible, § 68.
- discretion of carrier in fixing, § 67, ¶ A.
- method enjoined by Act to Regulate Commerce, § 81.
- discrimination in, § 372.
- declaring false classification violation of statute, § 393.
- jurisdiction of Commission over,
 - power to order change in classification of commodities, § 82, ¶ A.
 - power to restrain enforcement of new classification pending investigation, § 82, ¶ F.
 - order to continue in force for two years, § 82, ¶ B.
 - may upon its own initiative enter upon hearing concerning propriety of new classification, § 82, ¶ C.
 - no authority to establish classification with independent water carriers, § 82, ¶ E.
 - may not establish in connection with street electric passenger railways, § 82, ¶ D.

CLASSIFICATIONS,

See CLASSIFICATION OF FREIGHT.

- nature of, § 65.
- relation to freight tariffs, § 65.
- complement of freight tariffs, § 65.
- territorial division of country for classification purposes, § 66.
- "official" classification territory, § 66, ¶ B.
- southern classification territory, § 66, ¶ C.
- western classification territory, § 66, ¶ D.
- comparison of different classifications, § 72.
- committees, § 78.
- technical terms, interpretation of, § 76.
- use of technical terms, § 76.
- uniform classification,
 - in general, § 79, ¶ A.
 - Commission will recognize efforts of carriers to arrive at, § 79, ¶ B.
- as documentary evidence before Commission, § 806, Rule XIII.
- publication, posting and filing of,
 - See FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

[References are to sections and paragraphs.]

CLASSIFICATIONS—*Continued.*

- tariff not governed by classification except when so specified, § 470.
- alternative use of class or commodity rated, § 472.
- copies of,
 - as prima facie evidence, § 86.
 - preserved as public records in custody of Secretary of Commission, § 85.

CLERGYMEN,

- may receive free passes, § 594, § 603, ¶ A.
- families of, not entitled to free passes, § 603, ¶ B.

COAL,

- See COAL CARS; COAL MINES.
- higher rates when loaded from wagon than loaded by tippie,
 - § 364, ¶ H.
- used for steam purposes not entitled to reduced rates, § 320.

COAL CARS,

- See COAL; COAL MINES.
- duty of carrier to furnish, § 158, ¶ C.
- Commission no authority to order system of mine ratings, § 172,
 - ¶ C.
- rules for rating of coal mines, § 165, ¶ I.
- carriers not required by law to establish system of mine ratings,
 - § 165, ¶ J.
- refusal of cars for loading coal from wagons, § 165, ¶ F.
- distribution of system-fuel and foreign railroad cars, during car shortage, § 165, ¶ H.

COAL MINES,

- See COAL; COAL CARS.
- Commission no authority to establish system of mine ratings,
 - § 172, ¶ C.
- rules for rating of coal mines, § 169, ¶ H.
- carriers not required by law to establish system of mine ratings,
 - § 165, ¶ J.

COLLECTION OF CHARGES,

- See PAYMENT FOR TRANSPORTATION.

"C. O. D." SERVICE,

- refusal of express company to extend service to shipments of liquor, § 377.

COLORLED PASSENGERS,

- discrimination between white and, § 381.
- "jim crow" cars, § 381.

[References are to sections and paragraphs.]

COMMERCE,

See INTERSTATE COMMERCE; FOREIGN COMMERCE; INTRATERRITORIAL TRANSPORTATION; DISTRICT OF COLUMBIA; INTRASTATE COMMERCE; TRANSPORTATION.

COMMERCIAL TRAVELERS,

not entitled to free passes, § 612.

COMMISSION,

See INTERSTATE COMMERCE COMMISSION; STATE RAILROAD COMMISSIONS.

COMMISSIONS,

giving of, as medium for rebating, § 399.
refunds as condition of sale of transportation, § 399, ¶ A.
on import traffic, § 399, ¶ B.
division of between carrier's agents and shippers, § 399, ¶ C.

COMMITTEES,

classification, § 78.

COMMODITIES CLAUSE,

constitutionality of statute, § 716.
interpretation of statute, § 716.
statute prohibiting carriers transporting commodities in which they are interested, § 716.
exception in favor of timber and manufactured products, § 716.

COMMODITY RATES,

defined, § 87, ¶ H.
must be specific, §§ 529, 471.
only rate that can lawfully be used, § 530.
not indexed, not lawful, § 469, ¶ H.
must be alphabetically arranged, § 469, ¶ G.
alternative use of class or commodity rates, § 472.

COMMON CARRIERS,

See CARRIERS.

COMMON CONTROL, MANAGEMENT OR ARRANGEMENT,

phrase defined, § 33, ¶ B.
for continuous carriage or shipment, § 33, ¶ B.

COMMON LAW,

inapplicable to regulation of interstate commerce, p. 5.
right of carriers to contract not abridged by Act, § 252.

[References are to sections and paragraphs.]

COMMUTATION TICKETS,

- as against mileage tickets, § 379, ¶ K.
- nature of, § 562, ¶ A.
- legality of, § 562, ¶ B.
- issuance of, optional with carrier, § 562, ¶ C.
- regulations governing sale of, must not discriminate between classes of persons, § 562, ¶ D.
- use of intrastate ticket in interstate journey, § 562, ¶ H.
- publication of, § 656, ¶ A.
- jurisdiction of Commission over, § 586, ¶ F.

COMPANY MATERIAL,

- free carriage of,
 - in general, § 315, ¶ A.
- transportation for eating houses operated by carriers, § 315, ¶ B.
- preference to, during embargo, § 354.

COMPARISON OF ARTICLES,

- in fixing freight classification, § 67, ¶ C.

COMPARISON OF RATES.

- necessity for, § 95, ¶ A.
- on different lines in different sections of country, § 95, ¶ B.
- on different branches or lines of same carrier, § 95, ¶ C.
- on rival lines, § 95, ¶ D.
- division of through rate,
 - no criterion by which to measure local rates, § 95, ¶ E.
 - not conclusive evidence of reasonableness of through rate itself, § 95, ¶ F.
- rates established by State authority as standards in fixing interstate rates, § 95, ¶ B.
- relation between water and rail transportation, § 95, ¶ H.

COMPENSATION,

- See FREIGHT RATES AND CHARGES; PASSENGER FARES AND TICKETS;
PAYMENT FOR TRANSPORTATION.

COMPETITION,

- as factor in classification, § 67, ¶ K.
- agreements between carriers to prevent, § 745, ¶ B.
- rates reduced to meet water competition which is subsequently eliminated, § 117.

COMPETITIVE ARTICLES.

- discrimination between in same market, § 364, ¶ N.

[References are to sections and paragraphs.]

COMPLAINTS,

rule as to, § 806, Rule III.

forms of,

complaint against single carrier, § 806, No. 1.

complaint against two or more carriers, § 806, No. 2.

division and nature of, § 782, ¶ A.

formal, § 782, ¶ B.

informal, § 782, ¶ C.

how and by whom made, § 790, ¶ A.

how served upon carriers, § 796, ¶ B.

reparation by carriers before investigation, § 790, ¶ C.

investigation of, by Commission, § 790, ¶ D.

before Commission or suit in court, § 789.

forwarded by State railroad commissions, § 790, ¶ E.

Commission must make report of investigation of, § 790, ¶ F.

reports of investigation must be entered of record, § 790, ¶ G.

service of copies of reports on parties, § 790, ¶ H.

complainant need not be directly damaged, § 790, ¶ I.

COMPRESSION OF COTTON IN TRANSIT,

legality of privilege, § 215, ¶ B.

"floating" cotton, § 217.

jurisdiction of Commission over, § 236, ¶ D.

CONCEALMENT,

of character of package containing explosives, § 453.

CONCESSIONS,

See REBATES AND CONCESSIONS.

CONCURRENCE IN TARIFFS,

See FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHEDULES.

CONDITIONS,

embodied in bills of lading, § 126.

CONGRESS,

power of, to create Interstate Commerce Commission, § 1.

control of Congress over,

interstate commerce, § 28, ¶ A.

intraterritorial transportation, § 29, ¶ A.

transportation within District of Columbia, § 30, ¶ A.

foreign commerce, § 31, ¶ A.

attitude of, as to pooling contracts, at passage of Act, § 691.

has full power to correct discriminations, § 360.

[References are to sections and paragraphs.]

CONNECTING CARRIERS,

See INTERCHANGE OF TRAFFIC.

CONSIGNMENTS,

distribution of freight held in storage by carrier, § 262.

CONSOLIDATED CARLOADS,

rates on consolidated carloads of L. C. L. shipments,

when owner of goods is shipper, § 364, ¶ P.

when shipper is forwarding agent having no interest in goods transported, § 364, ¶ P.

CONSTITUTIONAL LAW,

statute making initial carrier liable for loss or damage to goods beyond its own line, § 309.

CONTENTS,

false reporting contents of packages a misdemeanor and penalty, § 758.

CONTENTS OF TARIFFS,

See FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHEDULES.

CONTINUOUS TRANSPORTATION,

See INTERCHANGE OF TRAFFIC.

CONTRACTORS,

free passes to contractors employed in construction and improvement of line, § 607.

CONTRACTS,

See BILLS OF LADING; CONTRACTS BETWEEN CARRIERS; POOLING CONTRACTS.

effect of private agreement between carrier and shipper concerning charges for transportation, § 105.

for different rate than that published in tariff, invalid, § 242.

ignorance of shipper as to published rate does not validate contract for lower rate, § 243.

mistake of carrier's agent in quoting rate to shipper, § 244.

to maintain established rate ineffective after higher rate established, § 246.

special understanding between shipper and carrier not published in tariffs, of no valid effect, § 247.

leasing carrier's property in consideration of lessee's shipments, § 248.

State statutes relating to contracts between carriers and shippers, § 254.

[References are to sections and paragraphs.]

CONTRACTS—*Continued.*

- status of contracts for special rates entered into before passage of Act, § 253.
- with shipper for transit privilege, § 415.
- statute does not take away carrier's common-law right to contract, § 252.
- common-law right of shipper to contract protected, § 252.
- Commission no authority to compel performance of, § 405, ¶ N.
- release of damages as consideration for issuance of free passes before passage of Act, § 250, ¶ A.
- conveyance of land to carrier as consideration for issuance of free passes before passage of Act, § 250, ¶ B.
- status of contracts entered into before passage of Act, for free passes, § 250.
- shipper cannot recover on contract rate different from published rate, § 420.
- Commission no authority to award damages for breach of, § 405, ¶ N.

CONTRACTS BETWEEN CARRIERS,

See POOLING CONTRACTS.

- copies of contracts, agreements, or arrangements between carriers must be filed with Commission, § 671.
- provisions of statute requiring filing of, with Commission, § 671, ¶ A.
- for division of joint rates and fares must be filed, § 671, ¶ B.
- Commission may prescribe proportion of joint rate where carriers fail to agree, § 672.
- elements to be considered by Commission in fixing division of rates, § 673.
- copies preserved as public records, § 674.
- division of proceeds of sale of shipment to pay charges, § 675.
- error in sale of passenger tickets, § 676.
- legalizing agreements for rate publication recommended, § 680.
- traffic associations,
 - agreements for maintenance of rates, § 745, ¶ A.
 - agreements to prevent competition, § 745, ¶ B.
- between telegraph, telephone and cable companies and other common carriers, § 678.

CONTRACTS OF SHIPMENT.

See BILLS OF LADING.

CONVEYANCE,

- of land to carrier as consideration for issuance of free passes, before passage of Act, § 250, ¶ B.

[References are to sections and paragraphs.]

COPIES,

- two copies of all tariffs to be filed with Commission, § 457, ¶ D, § 629, ¶ D.
- copies of rate schedules to be preserved as public records, § 508.
- rules of Commission as to copies of papers and testimony, § 806, Rule XVII.
- certified copies of tariffs as prima facie evidence, § 509.
- service of copies of papers, § 806, Rule VI.
- of contracts, agreements, etc., between carriers must be filed with Commission, § 671.
- of contracts preserved as public records, § 674.
- of annual reports of carriers to be preserved as public records, § 713.
- certified copies of reports as prima facie evidence, § 714.

CORRESPONDENCE,

- of Commission,
 - quotations from, § 23.
 - mailing lists in charge of operating division, § 14, ¶ A.
 - how addressed, § 8.
- of carriers, with Commission on transportation matters, § 18.

CORRESPONDENCE SCHOOLS,

- representatives of, not entitled to free passes, § 620.

COST OF CONSTRUCTION, MAINTENANCE AND OPERATION,

- of railroad, as element in rate-making, § 89, ¶ J.

COST OF PRODUCTION,

- as element in fixing classification, § 67, ¶ E.

COST OF SERVICE,

- against value of service principle in classification in freight, § 67, ¶ B.
- as element in classification of freight, § 67, ¶ G.
- as element in rate-making, § 89, ¶ B.

COTTON.

- See COMPRESSION OF COTTON.
- estimated weights on cotton in bales, § 152, ¶ B.
- compression of cotton in transit,
 - legality of privilege, § 215, ¶ B.
 - jurisdiction of Commission, § 236, ¶ D.
- "floating" cotton, § 217.
- REGULATION—78.

[References are to sections and paragraphs.]

COUNSEL,

See ATTORNEYS.

special, of Commission,

authority to employ, § 12.

expense of employment, § 12.

practice of Commission prior to 1906 Amendment, § 12.

COURTS,

See FEDERAL COURTS.

CREDIT,

right of carrier to require prepayment from one consignee and to give credit to another, § 367, ¶ A.

CROPS,

inability to harvest, as speculative damages, § 429, ¶ F.

CUSTOMS DUTIES,

freight received in United States and carried through foreign country into United States, subject to customs duties in case of failure to publish through rates, § 486, ¶ B.

CUSTOMS INSPECTORS,

free passes to, § 594.

CUT-RATE TICKETS,

See TICKET BROKERAGE.

D**DAMAGED SHIPMENTS,**

movement of shipments damaged in transit, § 318, ¶ C.

may be hauled as if property of carrier, § 318, ¶ E.

rules must be published and applied via route over which shipment moved, § 318, ¶ D.

DAMAGE TO PROPERTY,

Commission no jurisdiction to award reparation for, § 405, ¶ B.

DAMAGES AND REPARATION,

See CLAIMS.

release of damages as consideration for issuance of free pass, § 250, ¶ A.

jurisdiction of Commission to award reparation,

in general, § 405, ¶ A.

loss of profit by tardy delivery, § 405, ¶ B.

loss of property in strtnsit, § 405, ¶ B.

[References are to sections and paragraphs.]

DAMAGES AND REPARATION—Continued.

- damage to property in transit, § 405, ¶ B.
- damages accruing on shipments that moved under published tariff rates that were subsequently declared unreasonable, § 405, ¶ C.
- reparation in case involving collection of higher rate than that published in tariff, § 405, ¶ D.
- primary jurisdiction over unreasonableness of rates, § 405, ¶ E.
- reparation for misrouting traffic, § 405, ¶ F.
- shrinkage of cattle in transit, § 405, ¶ B.
- intrastate traffic, § 405, ¶ H.
- trespass, § 405, ¶ I.
- overcharge due to error in weighing, § 405, ¶ J.
- damages resulting from discrimination in furnishing transportation facilities, § 405, ¶ K.
- set-off, § 405, ¶ L.
- abatement of jurisdiction when territory is admitted as State, § 405, ¶ M.
- breach of contract, § 405, ¶ M.
- refund from published rate, § 405, ¶ O.
- damages due to carrier's failure to perform special services as agreed, § 405, ¶ P.
- reparation based on division of revenue between carriers, § 405, ¶ I.
- unreasonable joint through rates from point in United States to point in adjacent foreign country, § 405, ¶ R.
- pecuniary reparation contemplated, § 406.
- reparation limited to damages arising from violations of Act to Regulate Commerce, § 407.
- assessment of charges in excess of published schedule,
 - manner in which overcharges accrue, § 408, ¶ A.
 - measure of damages, § 408, ¶ B.
 - right of shipper to recover overcharges, § 408, ¶ C.
 - refund of transfer charges, § 408, ¶ D.
- assessment of unreasonable rates,
 - measure of recovery, § 409, ¶ A.
 - rate must have been unreasonable when paid to justify refund, § 409, ¶ B.
 - reduction in rate raises no presumption that former rate was unreasonable for purposes of reparation, § 409, ¶ C.
 - presumption where long-established rate is advanced for short period and then reduced to former basis, § 409, ¶ G.
 - enforcement of rules and regulations not shown in published tariff, § 93, ¶ EE.

[References are to sections and paragraphs.]

DAMAGES AND REPARATION—*Continued.*

right of shipper to recover damages sustained through his refusal to ship because of unreasonable rates, § 409, ¶ F.
responsibility of carrier participating in joint rate, § 409, ¶ G.
responsibility of carrier under released-valuation clause, § 409, ¶ H.

damages accruing from violation of long-and-short haul clause,
right of shipper to recover, § 411, ¶ A.
measure of damages, § 411, ¶ B.

protest of shipper against payment of excessive charges not prerequisite to recovery, § 412.

Commission will not order reparation for purpose of equalizing rates, § 413.

establishment of through rate for purpose of awarding reparation, § 414.

claim for damages cannot be based on unlawful privilege, § 415.

refund of overcharge on shipment to adjacent foreign country, § 416.

refund where clerical error in tariff results in higher rate, § 417.

where rates have been voluntarily reduced, Commission will not award reparation as matter of course, § 418.

reparation will not be ordered where its effect is to make re-signing privilege retroactive, § 419.

shipper cannot recover on contract rate different from published rate, § 420.

damages accruing account detention of goods until rate is paid, § 421.

failure of carrier to post rate schedules, § 422.

loss of profit account tardy delivery, § 405, ¶ D.

loss of property in transit, § 405, ¶ B.

damage to property in transit, § 405, ¶ B.

shipments moving under published tariff rates that were subsequently declared unreasonable, § 405, ¶ C.

collection of higher rate than that named in published tariffs, § 405, ¶ D.

primary jurisdiction of Commission over unreasonableness of rates, § 405, ¶ E.

shrinkage of cattle in transit, § 405, ¶ G.

intrastate traffic, § 405, ¶ H.

trespass, § 405, ¶ I.

overcharges,

due to error in weighing, § 405, ¶ J.

manner of accruing, § 408, ¶ A.

measure of damages, § 408, ¶ B.

right of shipper to recover, § 408, ¶ C.

[References are to sections and paragraphs.]

DAMAGES AND REPARATION—*Continued.*

refund of transfer charges, § 408, ¶ D.

refund on shipment to adjacent foreign country, § 416.

misrouting by carrier's agent, § 424, ¶ I.

assignability of claims, § 434.

unjust discrimination,

in furnishing transportation facilities, § 405, ¶ K.

recovery for assessment of discriminatory charge, § 426, ¶ A.

furnishing cars, § 426, ¶ B.

measure of damages, § 426, ¶ C.

discrimination must be actual, § 426, ¶ D.

liability of connecting carrier for discrimination practiced by
initial carrier, § 426, ¶ E.

penalty for shipper obtaining payment of damages by false representation, § 761.

set-off, § 405, ¶ L.

abatement of action where a territory has been admitted as a
State, § 405, ¶ M.

breach of contract, § 405, ¶ N.

refund from tariff rate, § 405, ¶ O.

failure of carrier to perform special service as agreed, § 405, ¶ P.

division of revenue between carriers, § 405, ¶ Q.

Act to Regulate Commerce contemplates pecuniary reparation,
§ 406.

transfer charges, refund of, § 408, ¶ D.

unreasonable rates, assessment of, § 409.

rate must have been unreasonable when paid to justify refund,
§ 409, ¶ B.

reduction in rate raises no presumption that former rate was un-
reasonable for reparation purposes, § 409, ¶ C.

measure of damages,

overcharges, § 408, ¶ B.

assessment of unreasonable rate, § 409, ¶ A.

violation of long-and-short-haul clause, § 411.

unjust discrimination, § 426, ¶ C.

presumption where long-established rate is advanced for short pe-
riod and then reduced to former basis, § 409, ¶ B.

rules and regulations not shown in published tariffs, § 409, ¶ E.

refusal of shipper to make shipments because carrier demanded
unreasonable rate, § 409, ¶ F.

equalizing rates for purposes of reparation, § 413.

through route, establishment of, for purposes of reparation, § 414.

unlawful privilege cannot be made basis of claim, § 415.

clerical error in tariff resulting in higher rate, § 417.

[References are to sections and paragraphs.]

DAMAGES AND REPARATION—*Continued.*

- contract rate different from published rate, § 420.
- detention of goods until published rate is paid by consignee, § 421.
- misrouting shipment, liability of carrier,
 - jurisdiction of Commission, § 405, ¶ F.
 - where no specific instructions are given by shipper, § 424, ¶ A.
 - where carrier disregards shipper's instructions, § 424, ¶ B.
 - carrier responsible for misrouting only one to make reparation, § 421, ¶ C.
 - where initial carrier is responsible for misrouting, § 424, ¶ D.
 - misrouting by line that has no tariff on file, § 424, ¶ E.
 - where connecting carrier received shipment without routing instructions, § 424, ¶ F.
 - refund of drayage charges, caused by, § 424, ¶ G.
 - carriers reimbursing connecting lines for misrouting, § 424, ¶ H.
 - overcharge caused by error of carrier's agent, § 424, ¶ I.
- drayage charges, refund of caused by misrouting, § 424, ¶ G.
- reimbursing connecting lines for misrouting, § 424, ¶ H.
- error of carrier's agent in misrouting causing overcharge, § 424, ¶ I.
- claims not invalidated by subsequent cancellation of absorption rule, § 427.
- fruit damaged by delayed notice of arrival at destination, § 428.
- remote or speculative damages,
 - in general, § 429, ¶ A.
 - loss of employment, § 429, ¶ B.
 - loss of profit, § 429, ¶ C.
 - loss of business, § 429, ¶ D.
 - loss of prestige, § 429, ¶ E.
 - inability to harvest crops, § 429, ¶ F.
- speculative damages,
 - See REMOTE OR SPECULATIVE DAMAGES.
 - loss of employment, § 429, ¶ B.
 - loss of profit, § 429, ¶ C.
 - loss of business, § 429, ¶ D.
 - loss of prestige, § 429, ¶ E.
 - inability to harvest crops, § 429, ¶ F.
- passenger wrongfully deprived of benefit of coupon of round-trip excursion ticket, § 430.
- responsibility of carrier for failure to furnish proper cars to which rates apply, § 431.
- harvesting crops, inability to, § 429, ¶ F.
- freight unloaded by carrier's agent in depot by mistake instead of switching car to consignee's siding, § 432.
- liability of receiving carrier for loss or damage,

[References are to sections and paragraphs.]

DAMAGES AND REPARATION—*Continued.*

- provisions of statute, § 433, ¶ A.
- remedies under law existing at passage of Act, not barred, § 433, ¶ B.
- initial carrier may have recourse upon carrier responsible, § 433, ¶ C.
- constitutionality of statute, § 309.
- assignability of overcharge claims, § 434.
- benefit of reparation order extends to all like shipments, § 435.
- delivering carrier must investigate before paying claims, § 436.
- adjustment of claims on presentation, § 437.
- liability of members of traffic association for unreasonable rate charged, § 438.
- parties entitled to reparation, § 439.
- limitation of action,
 - claims must be filed within two years, § 798, ¶ A.
 - accrued claims at passage of Act, § 798, ¶ B.
- rules of procedure before Commission, § 442.
- order of Commission awarding reparation,
 - when effective, § 797, ¶ A.
 - shall continue in force not exceeding two years, § 797, ¶ B.
 - service by mailing, § 797, ¶ C.
 - Commission may suspend or modify, § 797, ¶ D.
 - carrier must comply with, § 797, ¶ E.
 - punishment for failure to obey, § 776.
- procedure before Commission, § 442.
- change of rate while shipment was on ocean, § 447.
- remedy for wrongs which occurred prior to Act, § 445.
- special reparation on informal complaints, § 782, ¶ C.
- failure of initial carrier to secure concurrence of connecting line resulting in damage to shipper, § 423.

"DEAD" FREIGHT,

- absorption of terminal charge on "dead" freight and assessment of same on live stock, § 366, ¶ B.

DEALERS,

- not entitled to free passes, § 602.

DEATH,

- validating round-trip tickets in case of, § 568, ¶ B.

DECISIONS OF COMMISSION,

- reports of, § 17.
- fares prescribed in, must be promulgated in tariffs, § 649.
- rates prescribed in, must be promulgated in tariffs, §§ 496, 540.

[References are to sections and paragraphs.]

DECLARED VALUATION,

See VALUATION.

DEFINITIONS,

See TECHNICAL TERMS.

DELAYS,

Commission no jurisdiction over delay in receipt, forwarding or delivery of traffic, § 275, ¶ C.

DELIVERY OF PROPERTY.

obligation of carrier to collect its tariff rate upon delivery of shipment, § 302.

allowances for, § 328.

shippers should adjust their business to meet necessary regulations governing, § 259.

carriers are not required to make free delivery to points located on line of another carrier, § 263.

carrier not required to telegraph consignor when shipment is refused by consignee, § 272.

Commission no jurisdiction over delay in, § 275, ¶ C.

Commission no authority to prescribe certain time to be allowed consignee to designate point of delivery, § 275, ¶ D.

shipper may direct delivery, § 193.

DEMURRAGE, OR "CAR-SERVICE,"

must not be included in higher charge in applying long-and-short-haul clause, § 114.

defined, § 277.

charge consigned as a penalty v. a rental or storage charge § 278.

right of carrier to assess, § 279.

different plans considered, § 280.

factors to be considered in fixing rules, § 281.

jurisdiction of Commission exclusive over demurrage affecting interstate shipments, § 281.

State regulations not applicable to demurrage on interstate shipments, § 282.

charges and regulations must be shown in published tariffs, § 283.

failure of carrier to make reference in tariff of rates to car-service tariff, § 282.

charge must be just and reasonable, § 284.

five dollars per day for detention of refrigerator cars held not unreasonable, § 284, ¶ C.

difference in free-time allowance based on nature and character of commodity, § 285.

[References are to sections and paragraphs.]

DEMURRAGE, OR "CAR-SERVICE"—Continued.

- duty of shipper or consignee to pay, § 286.
- duty of carriers to collect, § 287.
- when consignee is relieved from payment, § 288.
- assessment of demurrage on privately-owned cars,
 - in general, § 289, ¶ A.
 - charge held to be reasonable when assessed against cars detained on siding owned by carrier, § 289, ¶ B.
 - cars temporarily out of service standing on carrier's storage tracks, § 289, ¶ C.
- charges accruing pending controversy between shipper and carrier,
 - dispute as to method of paying freight charges, § 290, ¶ A.
 - dispute as to reasonableness of established rate, § 290, ¶ B.
- charges accruing pending controversy between connecting carriers,
 - disagreement between carriers under reconsignment tariff, § 291, ¶ A.
 - dispute on question of divisions, § 291, ¶ B.
- astray shipments, § 292.
- charges, resulting from strikes, § 293.
- f. o. b. shipments, § 294.
- traffic from and to Canada, § 295.
- reciprocal demurrage considered,
 - as remedy for car shortage, § 176, ¶ B.
 - defined, § 176, ¶ A.
 - jurisdiction of Commission, § 296, ¶ B.
- waiver of demurrage charges by carriers,
 - discrimination between shippers, § 297, ¶ A.
 - carriers must publish rules, § 297, ¶ B.
 - charges waived account inclement weather, § 297, ¶ C.
 - charges waived account carrier "bunching" cars, § 297, ¶ D.
 - charges waived under special circumstances, § 297, ¶ E.
 - waiver of charges where sale of freight does not yield transportation charges, § 297, ¶ F.
- uniform demurrage rules,
 - cars subject to rules, § 298, Rule 1.
 - free time allowed, § 298, Rule 2.
 - computing time, § 298, Rule 3.
 - notification, § 298, Rule 4.
 - placing cars for unloading, § 298, Rule 5.
 - cars for loading, § 298, Rule 6.
 - charges, § 298, Rule 7.
 - causes, § 298, Rule 8.
 - claims, § 298, Rule 8.
 - average agreement, § 298, Rule 9.

[References are to sections and paragraphs.]

DEMURRAGE, OR "CAR-SERVICE"—*Continued.*

- copy of average agreement, § 298, Rule 9.
- rules and regulations governing must be shown in published tariffs, § 461, ¶ I.
- demurrage charge must not be included in higher charge in considering fourth section, § 114.

DEMURRER,

- notice in nature of, § 806, Rule V.
- form of, § 806, No. 4.

DEPARTMENTS,

- of work under Interstate Commerce Commission,
 - operating division, § 14, ¶ A.
 - division of rates and transportation, § 14, ¶ B.
 - bureau of statistics and accounts, § 14, ¶ C.
 - division of claims, § 14, ¶ D.
 - division of law, § 14, ¶ E.
 - division of prosecutions, § 14, ¶ F.
 - branch in charge of docket work, § 14, ¶ A.
 - safety appliance branch, § 14, ¶ A.
 - mailing branch, § 14, ¶ A.
 - branch in charge of accident reports, § 14, ¶ A.
 - stenographic and typewriting force, § 14, ¶ A.
 - division of accounts, § 14, ¶ C.
 - division of statistics, § 14, ¶ C.
 - board of examiners, § 14, ¶ C.

DEPOSITIONS,

- rule as to, § 806, Rule XI.
- testimony may be taken by, § 795, ¶ D.
- Commission may order, § 795, ¶ E.
- before whom taken, § 795, ¶ F.
- reasonable notice must be given, § 795, ¶ G.
- compulsory testimony by, § 795, ¶ H.
- manner of taking, § 795, ¶ I.
- when witness is in foreign country, § 795, ¶ J.
- must be filed with Commission, § 795, ¶ K.
- fees of witnesses and magistrates, § 795, ¶ L.
- form of notice to take, § 806, No. 6.

DEPOTS,

- See FREIGHT DEPOTS; STATIONS.

DESCRIPTION,

- shipper's description of article in fixing classification, § 67, ¶ L.

[References are to sections and paragraphs.]

DESTITUTE PERSONS,

free passes to, § 594.

DESTRUCTION,

of records and accounts, punishment for, § 771.

DETENTION,

damages accruing account detention of goods until rate is paid,
§ 421.

DETONATORS,

regulations for transportation of, § 455.

DIFFERENTIALS,

defined, § 87, ¶ F.

DISCRETION,

of carrier in fixing classification, § 67, ¶ A.

DISCRIMINATIONS, PREFERENCES AND ADVANTAGES,

See REBATES AND CONCESSIONS; FREE AND REDUCED-RATE PASSENGER
TRANSPORTATION; FREE AND REDUCED-RATE TRANSPORTATION OF
PROPERTY; LONG-AND-SHORT-HAUL CLAUSE.

position of passenger not good ground for discrimination, § 379, ¶ A.
round-trip fare not unjustly discriminatory against higher one-way
fare, § 379, ¶ C.

between ministers of different denominations in granting reduced
fares, § 379, ¶ E.

party-rate tickets not unjustly discriminatory against single pas-
senger fares, § 379, ¶ F.

between party classes in granting party rates illegal under simi-
lar circumstances and conditions, § 379, ¶ G.

where difference in charge to party classes was justified, § 379, ¶ H.
mileage, excursion and commutation passenger tickets, § 379, ¶ I.

issuance of excursion tickets on one occasion and refusal to issue
on similar occasion, § 379, ¶ J.

ticket brokerage, § 380.

unjust discrimination defined and prohibited, § 358.

undue or unreasonable preference or advantage forbidden, § 359.

purpose of prohibition against unjust discrimination and undue or
unreasonable preference or advantage, § 360.

technical phrases used in statute, defined and their usage,

“like kind of traffic,” § 361, ¶ A.

“under substantially similar circumstances and conditions,”
§ 361, ¶ B.

“discrimination,” § 361, ¶ C.

[References are to sections and paragraphs.]

DISCRIMINATIONS, PREFERENCES AND ADVANTAGES—*Continued.*

- "like services," § 361, ¶ D.
- not all discriminations, preferences or advantages unlawful, § 362, ¶ A.
- facts to be considered in determining whether an unjust discrimination exists, § 362, ¶ B.
- carriers bound to afford equal facilities of transportation, § 363.
- discrimination in rates for transportation of freight, § 364.
- carriers granting each other preferential rates lower than charged shipping public for same service, § 364, ¶ A.
- lower rate for trainloads than for carloads, § 364, ¶ B.
- higher rate for perishable freight than for ordinary freight, § 364, ¶ C.
- charging for weight of barrel without making corresponding charge when oil is shipped in tank cars, § 364, ¶ D.
- allowance for loss by leakage and evaporation to shippers of oil in tank cars, § 364, ¶ E.
- difference between rates on flour in sacks and in barrels, § 364, ¶ F.
- lower rate on immigrant movables than on household goods generally, § 364, ¶ G.
- higher rate on coal when loaded from wagons than when loaded by tipple, § 364, ¶ H.
- charging more for shorter than for longer distance over same line in same direction, See Long-and-Short-Haul Clause.
- higher domestic rates than inland division of through import or export rates, § 364, ¶ J.
- higher rate on traffic originating on connecting carriers than on own line, § 364, ¶ K.
- division of through rates lower than local rates between same points, § 364, ¶ L.
- "like kind of traffic," defined, § 361, ¶ A.
- "under substantially similar circumstances and conditions," defined, § 361, ¶ B.
- "discrimination," defined, § 361, ¶ C.
- "like service," defined, § 361, ¶ D.
- group rates, § 364, ¶ M.
- between competitive articles in same market, § 364, ¶ N.
- higher rates for export than domestic traffic, § 364, ¶ O.
- consolidated carloads of L. C. L. shipments, § 364, ¶ P.
- discrimination in terminal facilities on different commodities, § 366, ¶ A.
- absorption of terminal charge on "dead" freight and assessment of same on live stock, § 366, ¶ B.
- carriers demanding prepayment of charges for transportation, § 367.

[References are to sections and paragraphs.]

DISCRIMINATIONS, PREFERENCES AND ADVANTAGES—*Continued.*

retention of overcharge, unjust, § 368.

distribution of cars, § 369.

duty of carriers to treat shippers alike in distribution of cars,
§ 369, ¶ A.

coal cars must be distributed without favoritism, § 369, ¶ B.

shipper may not complain of reasonable rule of car distribution,
§ 369, ¶ C.

enforcement of embargo, § 369, ¶ D.

hauling private cars, § 370.

diversion of traffic contrary to shipper's instructions, § 371.

classification, § 372.

special privileges which can only be enjoyed by certain shippers,
§ 373.

transit privileges, § 374.

carriers must not discriminate in allowing transit privileges, § 374,
¶ A.

between manufactured products, § 374, ¶ B.

between localities in allowance of transit privileges, § 374, ¶ C.

unlawful to discriminate between localities, § 375, ¶ A.

locality entitled to benefit of natural advantages, § 375, ¶ B.

unfavorable location as affecting discrimination, § 375, ¶ C.

carriers may not foster local industries, § 375, ¶ D.

carriers may not create artificial market conditions, § 375, ¶ E.

carrier may not favor large town against smaller one, § 375, ¶ F.

between group points, § 375, ¶ G.

long-and-short-haul clause and relief from operation thereof. See
Long-and-Short-Haul Clause.

competition not necessarily a justification in establishment of
preferential rates, § 375, ¶ I.

between localities in assessing terminal charges, § 375, ¶ J.

maintenance of free "pick-up" delivery express service at one point
and not at another, § 375, ¶ K.

between connecting carriers in furnishing facilities for interchange
of traffic, § 668.

in exacting prepayment of charges by preceding carrier, § 668, ¶ C.

in granting wharfage facilities, § 668, ¶ D.

use of tracks and terminal facilities, § 668, ¶ E.

what constitutes unlawful discrimination between connecting car-
riers, § 668, ¶ B.

discrimination by connecting lines forbidden, § 668, ¶ A.

declared a misdemeanor and penalty therefor, § 758.

Government-aided railroad and telegraph companies, § 746.

[References are to sections and paragraphs.]

DISCRIMINATIONS, PREFERENCES AND ADVANTAGES—*Continued.*

- refusal of express company to extend c. o. d. service to shipments of liquor, § 377.
- preference in expediting military traffic in time of war, § 378.
- passenger fares, § 379.
- special rates on immigration traffic, § 379, ¶ D.
- excursion or commutation tickets v. mileage tickets, § 379, ¶ K.
- sale of cut-rate passenger tickets results in violation of law, § 380, ¶ A.
- actionable wrong committed by person carrying on ticket brokerage business, § 380, ¶ B.
- power of Federal Courts to enjoin ticket "scalpers," § 380, ¶ C.
- between white and colored passengers, § 384.
- "jim crow" cars, § 381.
- through passenger arrangement which affects rights of passenger beyond terminus of line, § 382.
- allegation in complaints for, § 382.
- passengers on freight trains, § 383.
- reparation for damages account of. See Damages and Reparation.
- rebates or concessions as unjust discriminations. See Rebates and Concessions.
- penalty of carrier, § 758.
- penalty of party receiving favors from carrier, § 758.
- jurisdiction of Commission over unjust discriminations,
 - provisions of statute, § 384, ¶ A.
 - distribution of cars, § 384, ¶ B.
- exaction of additional sum for failure of passenger to produce ticket, § 379, ¶ B.
- reparation for damages resulting from,
 - transportation facilities furnished, § 405, ¶ K.
 - recovery for assessment of discriminatory charge, § 426, ¶ A.
 - cars furnished, § 426, ¶ B.
 - measure of damages, § 426, ¶ C.
 - discrimination must be actual, § 426, ¶ D.
 - liability of connecting carrier for discrimination practiced by initial carrier, § 426, ¶ E.
- baggage, discrimination in handling, § 561, ¶ B.
- inducing common carrier to discriminate unjustly, penalty therefor, § 762.

DISTANCE,

- as element in rate-making, § 89, ¶ H.
- as factor in desirability of routes, § 186, ¶ B.

[References are to sections and paragraphs.]

DISTANCE TARIFFS,

- defined, § 465, ¶ F.
- may be used when no other rates are provided for, § 481, ¶ A.
- notation on, § 481, ¶ B.
- may be included in tariff of specific rates, § 481, ¶ C.
- official list of points and distances, § 481, ¶ D.

DISTRIBUTION,

- of consignments of freight held in storage by carrier, § 262.

DISTRIBUTION OF CARS,

- See CAR SUPPLY AND DISTRIBUTION..

DISTRICT OF COLUMBIA,

- regarded as a State, § 28, ¶ A.
- transportation within,
 - control of Congress over, § 30, ¶ A.
 - jurisdiction of Commission over, § 30, ¶ B.
- street railways within, subject to jurisdiction of Commission, § 50.

DIVERSION,

- unjust discrimination in diverting traffic contrary to shipper's instructions, § 371.
- of traffic enroute by carrier, without consent of shipper, § 195.
- of traffic by carrier to different route in case of necessity,
 - freight, § 196, ¶ A.
 - passengers, § 196, ¶ B.
- compensation between carriers in cases where traffic is diverted because of blockade, § 196, ¶ C.

DIVISION OF ACCOUNTS,

- under Commission,
 - part of bureau of statistic and accounts, § 14, ¶ C.
 - in charge of development of uniform system of accounting for carriers, § 14, ¶ C.
 - supervises board of examiners, § 14, ¶ C.
 - prescribes and promulgates accounting rules, § 14, ¶ C.

DIVISION OF CLAIMS,

- under Commission,
 - investigates claims for reparation, § 14, ¶ D.
 - performs important service for shipping public, § 14, ¶ D.

DIVISION OF EARNINGS,

- See POOLING CONTRACTS.

[References are to sections and paragraphs.]

DIVISION OF LAW.

under Commission,

composed of staff of attorneys, § 14, ¶ E.

employed by Commission, § 14, ¶ E.

attends to legal affairs of Commission, § 14, ¶ E.

represents commission in court proceedings, § 14, ¶ E.

DIVISION OF PROSECUTIONS.

under Commission,

investigates criminal violations of law, § 14, ¶ F.

prepares cases for presentation to United States prosecuting attorney, § 14, ¶ F.

DIVISION OF RATES AND TRANSPORTATION.

under Commission,

has charge of tariffs and other documents filed with Commission, § 14, ¶ B.

complies with demands for information concerning tariffs, etc., § 14, ¶ B.

prepares certified copies of tariffs, etc., to be used as evidence, § 14, ¶ B.

in charge of auditor, § 14, ¶ B.

DIVISION OF REVENUE.

failure of carriers to agree upon, does not nullify rate, § 98.

division of through rate no criterion by which to measure local rates, § 95, ¶ E.

division of through rate not conclusive evidence of reasonableness of through rate itself, § 95, ¶ F.

power of Commission to establish division of joint through rate, § 109, ¶ O.

right of terminal railroad to enjoy, § 337.

right of boat line controlled by shipper to enjoy, § 340.

Commission may prescribe proportion of joint rate when carriers fail to agree, § 672.

elements to be considered by Commission in fixing divisions of rates, § 673.

copies of contracts between carriers for division of rates and fares must be filed with Commission, § 671, ¶ B.

division of through rate lower than local rate between same points, § 364, ¶ L.

jurisdiction of Commission to award reparation based on division of revenue between carriers, § 405, ¶ Q.

[References are to sections and paragraphs.]

DIVISION OF STATISTICS.

under Commission,

part of bureau of statistics and accounts, § 14, ¶ C.

has charge of reports of carriers, § 14, ¶ C.

compiles returns from reports of carriers, § 14, ¶ C.

DOCKET,

of Commission,

branch in charge of work, § 14, ¶ A.

formal complaints, § 799.

informal complaints, § 799.

DOCUMENTARY EVIDENCE,

production of,

rule as to, § 806, Rule XIII.

power of Commission to require, § 795, ¶ A.

Commission may invoke aid of court, § 795, ¶ B.

penalty for disobedience to order of court, § 795, ¶ C.

claim that evidence will tend to criminate will not excuse,
§ 795, ¶ M.

immunity to witnesses producing documentary evidence, § 795,
¶ N.

penalty for neglect or refusal to produce, § 773.

DOCUMENTS,

See DOCUMENTARY EVIDENCE.

DRAWBACKS,

See REBATES AND CONCESSIONS.

DRAYAGE CHARGES,

generally, § 267.

rules and regulations governing, must be shown in published
tariffs, § 461, ¶ N.

DRAYS,

not subject to jurisdiction of Commission, § 58, ¶ D.

DUPLICATE,

of carrier's monthly reports furnished Commission, § 704, ¶ C.

DUTIES,

of Commission,

general statement concerning, § 3, ¶ E, § 24.

distribution of, § 14.

See JURISDICTION OF COMMISSION.

REGULATION—79.

[References are to sections and paragraphs.]

DYNAMITE,

regulations for transportation of, § 455.

E**EARNINGS,**

railroads entitled to earn six percent on fair valuation of property,
§ 89, ¶ J.

EGG-CASE MATERIAL,

rates should not exceed rates on box lumber, § 89, ¶ R.

ELECTION OF REMEDIES,

complainant must elect between complaint to Commission and
suit in court, § 789.

ELECTRIC RAILWAYS,

See STREET RAILWAYS.

subject to control of Commission, § 32, ¶ C.

application of hours-of-service-law to, § 730.

Commission may not establish in connection with,

classification, § 82, ¶ D.

through rates, § 109, ¶ I.

through routes, § 181, ¶ B.

ELEMENTS IN RATE-MAKING,

See FREIGHT RATES AND CHARGES; CLASSIFICATION OF FREIGHT; LONG-
AND-SHORT-HAUL CLAUSE; PASSENGER FARES AND TICKETS.

ELEVATION,

nature of, § 237.

duty of carrier to furnish, § 238.

right of carrier to procure elevation facilities from other sources,
§ 239.

charges for, right of carrier to assess, § 240.

allowance by carriers for service,

where owner of elevator has no interest in grain, § 241, ¶ A.

where owner of elevator is owner of grain, § 241, ¶ B.

does not include "treatment" of grain, § 237,

pertains entirely to the transportation, § 237.

period of elevation, § 237.

EMBARGOES,

defined, § 352.

lawfulness of, § 353.

preferences during period of,

to live stock, § 354.

[References are to sections and paragraphs.]

EMBARGOES—*Continued.*

to perishable freight, § 354.

to company's material, § 354.

duty of shipper to keep himself informed as to status of, § 355.

method of forwarding cars after embargo is raised, § 356.

discrimination in enforcing, § 369, ¶ D.

EMPLOYEES,

See HOURS-OF-SERVICE LAW.

of Commission,

authority of Commission to employ, § 6.

appointed under civil service rules, § 6.

number of, § 6.

recovery for death of employe inures to benefit of family, § 741.

liability of, for violations of law, §§ 758, 759.

penalty of employe transferring free pass to person not entitled to receive it, § 757.

defined, § 598, ¶ A.

of common carriers,

entitled to free passes, § 598, ¶ A.

families entitled to free passes, § 598, ¶ C.

household effects of, may be transported free, § 598, ¶ D.

of railroad receivers entitled to free passes, § 598, ¶ E.

ex-employees traveling to enter service entitled to free passes, § 598, ¶ B.

EMPLOYERS' LIABILITY ACT.

statute of June 11, 1906,

provisions of, § 737.

declared unconstitutional, § 738.

statute of June 22, 1908, § 739.

recovery for loss to family, § 740.

liability for injuries within territories, § 741.

EMPTY-CAR MOVEMENT.

low rates to take care of, § 89, ¶ P.

ENTERTAINMENT,

provided, or contribution made by carrier, § 578.

shown in passenger tariffs, § 638, ¶ Q.

ENTRIES,

punishment for false entry in accounts or records, § 771.

EPIDEMIC,

free passes to provide relief from, § 594.

[References are to sections and paragraphs.]

EQUALIZING RATES.

of different carriers, § 93, ¶ W.

Commission will not order reparation for purpose of, § 413.
equalizing rules of tariffs, § 489.

EQUIPMENT,

See CARS; CAR SUPPLY AND DISTRIBUTION; CAR SHORTAGE; WEIGHTS AND WEIGHING; DEMURRAGE OR "CAR-SERVICE;" INTERCHANGE OF CARS; PRIVATE CARS; COAL CARS; REFRIGERATOR CARS; PASSENGER CARS.

ERROR,

by carrier's agent causing passenger to pay additional charges, § 581.
refund where clerical error in tariff results in higher rate, § 417.
overcharge caused by error of carrier's agent in routing, § 424, ¶ I.

ESTIMATED WEIGHTS,

on standard packages, § 152.
in general, § 152, ¶ A.
cotton in bales, § 152, ¶ B.
vegetables, § 152, ¶ C.
apples, § 152, ¶ D.

EVAPORATION,

allowance for loss by, to shippers of oil in tank cars, § 364, ¶ E.

EVIDENCE,

documentary evidence,

production before Commission, § 795.
rule as to, § 806, Rule XIII.

power of special agents or examiners to receive, § 13, ¶ B.

accident reports not to be used as evidence against carrier, § 708,
¶ C.

presumption of reasonableness,

through rates which exceed combination of locals prima facie
unreasonable, § 93, ¶ J.

division of through rate not conclusive evidence of reasonable-
ness of through rate itself, § 95, ¶ F.

certified copies, as prima facie evidence,

freight tariffs, § 509.

classifications, § 86.

reports, § 509.

presumption of unreasonableness,

discontinuance and subsequent presumption of practice of ab-
sorbing charge, as evidence of unreasonableness, § 266, ¶ D.

[References are to sections and paragraphs.]

EVIDENCE—Continued.

where long-established rate is advanced for short period and then reduced to former basis, § 409, ¶ D.
onus probandi as to reasonableness of increased rate on common carrier, § 93, ¶ FF.

EXAMINERS,

special, of Commission,
to inspect accounts, records, and memoranda of carriers, § 13, ¶ A.
power to administer oaths, § 13, ¶ B.
power to examine witnesses, § 13, ¶ B.
power to receive evidence, § 13, ¶ B.
punishment for divulging information without authority, § 13, ¶ C, § 772.

EXCEPTION SHEETS.

See FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

EXCURSION FARES AND TICKETS,

issuance of on one occasion and refusal to issue on similar occasion, § 379, ¶ J.
against mileage tickets, § 379, ¶ K.
nature of, § 562.
legality of, § 562.
issuance of, optional with carrier, § 562, ¶ C.
invalidated through failure of carrier to make connection, § 562, ¶ I.
publication of, § 656, ¶ A.
how shown in tariffs, § 638, ¶ R.
jurisdiction of Commission, § 586, ¶ F.

EXCURSIONS,

See EXCURSION FARES AND TICKETS.
carrier may employ person to work up excursion travel, § 580.
contract between carrier and promoter of excursion, § 580.

EXCURSION TARIFFS,

must show or refer to, list of participating carriers, § 638, ¶ D.

EXHIBITIONS,

See FAIRS AND EXPOSITIONS.

EXPEDITED SERVICE,

reparation for failure of carrier to perform, as agreed, § 425.

[References are to sections and paragraphs.]

EXPENSES,

- of Commission,
 - how allowed, § 10.
 - how paid, § 10.
 - for transportation, § 10.
 - for telegrams, § 10.

EXPIRATION NOTICE,

See NOTICE FOR PUBLICATION OF RATES AND FARES.

EXPLOSIVES,

- penalty for violation of Transportation-of-Explosives Act, § 781.
- unlawful to transport explosives with passengers, § 448.
- unlawful to transport liquid nitroglycerine fulminate in bulk, or other like explosive, § 447.
- excepted classes of explosives that may be lawfully transported with passengers, § 450.
- Interstate Commerce Commission authorized to formulate regulations for safe transportation of, § 451.
- packages containing explosives must be marked, § 452.
- concealing character of packages containing explosives declared unlawful, § 453.
- regulations for the transportation of, § 455.
- classification of high, § 77.
- tariffs governing, § 484.

EXPORT RATES,

See EXPORT TRAFFIC.

EXPORT TRAFFIC,

- higher domestic rates than inland division of export rates, § 364, ¶ J.
- bills of lading covering, § 127.
- higher rates for export than domestic traffic, § 364, ¶ O.
- tariffs covering,
 - express, § 506.
 - passenger, § 662.
 - freight, § 506.

EXPOSITIONS,

See FAIRS AND EXPOSITIONS.

EXPRESS COMPANIES,

- See EXPRESS RATES; EXPRESS WAGONS; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS SERVICE.
- included within term "common carrier," § 35.
- subject to jurisdiction of Commission, § 35.

[References are to sections and paragraphs.]

EXPRESS COMPANIES—Continued.

were not subject to Act to Regulate Commerce prior to June, 1906,
§ 35.
carriers may refuse to handle cars of express companies, § 163, ¶ I.
free transportation of supplies of, by railroads, § 321.
free transportation of railway packages by, § 322.

EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES,
publication of rates, § 456.

filing tariffs, classifications, exception sheets, supplements, etc.,
filing by proper officer or designated agent, § 516.

concurrence of participating carriers, § 516, ¶ B.

two copies of all tariffs must be filed with Commission, § 516,
¶ C.

how tariffs filed with Commission to be addressed, § 516, ¶ D.
must be delivered to Commission within full statutory time,
§ 516, ¶ F.

must be delivered to Commission free from all charges for
postage, § 516, ¶ E.

disposition of tariffs received by Commission too late to give
statutory notice, § 516, ¶ G.

posting of tariffs, § 458.

rules and regulations affecting rates, § 520.

different kinds of tariffs defined,

local, § 521, ¶ A.

joint, § 521, ¶ B.

must be printed, § 522.

form and size of, § 523.

jurisdiction of Commission over publication, posting and filing,
§ 518.

notice required for publication of rates,

statutory, § 519.

changes filed and published must become effective and can
be changed only on thirty days' notice, § 519, ¶ B.

power of Commission to allow changes on less than statutory
notice, § 519, ¶ C.

requests for permission to amend on less than statutory no-
tice, § 519, ¶ D.

where full notice was given by competing company, § 519, ¶ E.
permission to change rates on short notice limited to emer-
gency or necessity, § 519, ¶ F.

amendment of joint tariffs on less than statutory notice, § 519,
¶ G.

reduction of joint rate to equal sum of locals, § 519, ¶ H.

[References are to sections and paragraphs.]

EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES—
Continued.

- joint rate greater than sum of locals, § 519, ¶ I.
- rates to and from new offices, § 519, ¶ J.
- rates on carload shipments between points as to which no carload rates are in effect, § 519, ¶ K.
- title-page to contain what information,
 - name of express company, § 524, ¶ A.
 - I. C. C. number and cancellations, § 524, ¶ B.
 - kind of tariff, § 524, ¶ C.
 - territory, § 524, ¶ D.
 - reference to governing classification and exception sheets, § 524, ¶ E.
 - dates, § 524, ¶ F.
 - expiration notice, § 524, ¶ G.
 - statutory notice or authority for shorter notice, § 524, ¶ H.
 - notice of supplements, § 524, ¶ I.
 - officer issuing, § 524, ¶ J.
- information that tariffs shall contain,
 - table of contents, § 525, ¶ A.
 - participating express companies, § 525, ¶ B.
 - concurrence numbers, § 525, ¶ C.
 - rates on commodities included in tariff and between same points, § 525, ¶ D.
 - index of offices, § 525, ¶ E.
 - territorial or group descriptions, § 525, ¶ F.
 - reference marks and abbreviations, § 525, ¶ G.
 - list of exceptions, § 525, ¶ H.
 - explanatory statements, § 525, ¶ I.
 - rules governing tariff, § 525, ¶ J.
 - no rule shall authorize substituting rate found in other tariff, § 525, ¶ K.
 - rate tables, § 525, ¶ M.
 - rules and regulations filed and posted may be referred to in other schedules governed thereby, § 525, ¶ L.
 - routes, § 525, ¶ N.
- basing tariffs, § 526.
- joint basing transfer tariffs, § 527.
- limiting use of term "Missouri River Points," "General Specials," etc., § 528.
- commodity rates,
 - must be specific, § 529.
 - only rate that can be lawfully used, § 530.
- rates for mixed shipments, § 531.

[References are to sections and paragraphs.]

EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES—

Continued.

cancellation of tariffs or parts thereof,

tariff or supplement shall specify, § 532, ¶ A.

must be authorized, § 532, ¶ B.

notices must be by supplement, § 532, ¶ C.

notice shall specify where rates will thereafter be found, § 532,

¶ D.

tariffs to and from season or summer offices, § 535.

State rates used in interstate transportation must be posted and filed, § 536.

local tariffs should have I. C. C. numbers and be posted and filed, § 537.

receipt by and filing with Commission does not relieve express company from liability for violation of Act, § 538.

rejected schedules, § 539.

rates prescribed in Commission's decisions must be promulgated in tariffs, § 540.

amendments and supplements,

defined, § 533, ¶ A.

form of, § 533, ¶ A.

participating carriers, § 533, ¶ B.

number and cancellations, § 533, ¶ C.

effective date of reissued items and I. C. C. reference, § 533, ¶ D.

number of supplements in effect at one time, § 533, ¶ E.

amount of matter supplement may contain, § 533, ¶ F.

index of tariffs,

express companies must publish complete index of tariffs, § 534,

¶ A.

arrangement of, § 534, ¶ B.

notation on title-page, § 534, ¶ C.

revision and supplements, § 534, ¶ D.

circulars announcing compliance with orders of court, § 541.

withdrawal of filed tariffs not permitted, § 546.

tariffs covering export and import traffic, § 547.

responsibility of express companies under tariffs, § 548.

maxima rates not specific rates, § 549.

letter of transmittal accompanying tariffs filed with Commission, § 545.

agents authorized to issue tariffs, classifications, exception sheets, etc.,

notice of authorization or acceptance must be filed, § 543, ¶ A.

form of appointment, § 543, ¶ B.

[References are to sections and paragraphs.]

EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES—

Continued.

- authorization for agent and concurrences must be on file, § 543, ¶ C.
- authority to agent may be revoked or transferred, § 543, ¶ D.
- joint agent will use his own I. C. C. serial number, § 543, ¶ E.
- tariff issued under concurrences will be filed by it for all concurring, § 543, ¶ F.
- send copies of joint publications to every participant, § 543, ¶ G.
- express company must not publish rates conflicting with or duplicating rates published by agent, § 543, ¶ H.
- express company may grant authority to joint agent to publish classifications, exception sheets and supplements, exception sheets and supplements, § 543, ¶ I.
- I. C. C. number of classification, § 543, ¶ J.
- list of participating companies, § 543, ¶ K.
- filing classification issued by joint agent, § 543, ¶ L.
- concurrence, § 543, ¶ O.
- if company does not authorize agent to file classification it is bound to statutory notice, § 543, ¶ M.
- power of attorney, § 543, ¶ N.
- concurrence in tariffs issued or filed by another express company for its agent,
- size of paper, § 544, ¶ A.
- forms of concurrence, § 544, ¶¶ B, C, D, E, F, G.
- numbers of concurrences and authorizations, § 544, ¶ H.
- printing and use of authorizations and concurrences, § 544, ¶ I.
- revocation effective, § 544, ¶ J.
- conflicting authority to be avoided, § 544, ¶ K.
- express company issuing authority or concurrence will not relieve from duty to post tariffs, § 544, ¶ L.

EXPRESS RATES.

See EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

- considerations determining reasonableness of, § 93, ¶ CC.
- in competition with United States mail, not standard of reasonableness, § 93, ¶ CC.
- “graduate” scale employed in construction, § 93, ¶ CC.
- merchandise rates, § 93, ¶ CC.
- establishment of, with reference to freight rates, § 93, ¶ CC.
- value of property in determining, § 93, ¶ CC.
- factors to be considered in determining.
- character of business, § 93, ¶ CC.
- capital employed, § 93, ¶ CC.

[References are to sections and paragraphs.]

EXPRESS RATES—*Continued.*

- hazard involved, § 93, ¶ CC.
- value of service, § 93, ¶ CC.
- value of property employed, § 93, ¶ CC.
- value of service in determining, § 93, ¶ CC.
- character of business in determining, § 93, ¶ CC.
- capital employed in determining, § 93, ¶ CC.
- hazard involved in determining, § 93, ¶ CC.
- value of property employed in determining, § 93, ¶ CC.

EXPRESS SERVICE,

- See EXPRESS COMPANIES; EXPRESS RATES; EXPRESS WAGONS; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.
- maintenance of free "pick-up" and delivery express service at one point and not another, § 375, ¶ K.
- refusal to extend C. O. D. service to shipments of liquor, § 377.

EXPRESS WAGONS,

- not subject to Act, § 58, ¶ C.
- transportation by, not subject to control of Commission, § 58, ¶ C.

EXTENSION OF TIME,

- rule of Commission in pleading, § 806, Rule VIII.
- on limited passenger tickets,
 - may be allowed in case of illness of passenger, § 570, ¶ A.
 - may include members of family traveling with ill passenger, § 570, ¶ B.
- in case of quarantine, § 570, ¶ C.
- in case of wrecks, washouts, etc., § 570, ¶ D.
- provision for, must be shown in tariffs, § 570, ¶ F.

F

FACTORS IN RATE-MAKING,

- See FREIGHT RATES AND CHARGES; CLASSIFICATION OF FREIGHT; LONG-AND-SHORT-HAUL CLAUSE; PASSENGER FARES AND TICKETS.

FAIRS AND EXPOSITIONS,

- free and reduced-rate transportation for, § 313.
- caretakers in charge of property transported to or from, § 601, ¶ I.

FAMILIES,

- recovery for death of employe inures to benefit of, § 740.
- defined, § 594, ¶ B.
- of officers, agents and employees entitled to free passes, § 598, ¶ C.
- includes household servants, § 600.

[References are to sections and paragraphs.]

FAMILIES—*Continued.*

of local attorneys, surgeons, and persons not regularly employed
by carrier not entitled to free passes, § 594, ¶ C.

FARES,

See PASSENGER FARES AND TICKETS; PASSENGER TARIFFS OR FARE
SCHEDULES; TICKET BROKERAGE; FREE AND REDUCED-RATE PAS-
SENGER TRANSPORTATION.

FAST FREIGHT LINES,

subject to jurisdiction of Commission, § 40.
guide books,
 issuance, § 482, ¶ A.
 tariff may refer to, § 482, ¶ B.

FEDERAL COURTS,

Interstate Commerce Commission not an "inferior court," § 25.
process of cannot be exercised in aid of an investigation before
Commission, § 25.

FEDERAL TROOPS,

may enjoy special rates, § 608.

FEES,

of witnesses and magistrates in taking depositions, § 795, ¶ L.

FERRIES AND FERRY COMPANIES,

See FERRY EMPLOYES.
ferries included in term "railroad," § 44.
when subject to jurisdiction of Commission, § 44.
when not subject to jurisdiction of Commission, § 60.

FERRY EMPLOYES,

hours-of-service law not applicable, § 731.

FILING TARIFFS AND CLASSIFICATIONS,

See FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR
FARE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE
SCHEDULES.

FIREWORKS,

regulations for transportation of, § 455.

FISH,

free transportation of, for United States Commission of Fish and
Fisheries, § 311, ¶ B.
passes to caretakers of, § 601, ¶ F.

[References are to sections and paragraphs.]

"FLOATING" COTTON.

See COMPRESSION OF COTTON IN TRANSIT.
nature of, § 217.

FLOUR,

compared with wheat, § 89, ¶ R.
difference between rates on flour in sacks and in barrels, § 364, ¶ F.

FOREIGN COMMERCE.

control of Congress over, § 31, ¶ A.
jurisdiction of Commission, § 31, ¶ B.
when not subject to jurisdiction of Commission, § 55.
general scope of, subject to Act, § 31, ¶ B.
transportation from United States to adjacent foreign country, § 31,
¶ C.
transportation from United States to foreign country and carried
from such place to port of transshipment, § 31, ¶ D.
transportation from foreign country to place in United States and
carried to such place from port of entry, § 31, ¶ D.

FOREIGN COUNTRIES.

See EXPORT TRAFFIC; IMPORT TRAFFIC.
effect where portion of transportation is through, § 28, ¶ F.
through passenger fares from points in United States to foreign
countries, § 559.
Canadian fares, § 558.
tariffs governing movement of passengers to and from, § 662.
tariffs covering freight received in United States and carried
through foreign country to any place in United States,
duty of carriers to print and post schedules of rates, § 486, ¶ A.
freight subject to customs duties in case of failure to publish
through rates, § 486, ¶ B.
messages sent from United States to, § 31, ¶ F.

FOREIGN RAILROADS,

when subject to jurisdiction of Commission, § 42.
jurisdiction of Commission limited to United States, § 62.

FOREIGN RAILROAD CARS,

responsibility of carriers for, § 163, ¶ J.
distribution of, during car-shortage, § 165, ¶ H.
duty of carriers to provide compensation for use of, § 684.

FORFEITURES,

See PENALTIES AND FORFEITURES.

[References are to sections and paragraphs.]

FORMAL COMPLAINTS,

before Commission, § 782, ¶ B.

docket of, § 799, ¶ A.

FORMS,

complaint against single carrier, § 806, No. 1.

complaint against two or more carriers, § 806, No. 2.

answer, § 806, No. 3.

notice in nature of demurrer, § 806, No. 4.

demurrer, notice in nature of, § 806, No. 4.

subpoena, § 806, No. 5.

notice of taking depositions, § 806, No. 6.

passes to eligible persons, § 596.

agreement for payment of car-service charges, § 298.

uniform bill of lading,

Commission no power to prescribe, § 125.

order consignments, § 126.

straight consignments, § 126.

certificates for cars to carry explosives, § 455.

contract with promoters of excursion, § 580.

tariffs, §§ 523, 636, 467.

concurrences in tariffs,

passenger, § 660, ¶¶ F, G, H, I, J, K.

express company, § 544, ¶¶ B, C, D, E, F, G.

freight, § 478, ¶¶ F, G, H, I, J, K.

appointment of agent to file tariffs,

passenger, § 641, ¶ B.

express, § 543, ¶ B.

freight, § 477, ¶ B.

letters of transmittal covering tariffs filed with Commission,

passenger, § 661.

express, § 545.

freight, § 479.

FORWARDING AGENTS,

engaged in handling consolidated carloads of l. c. l. shipments,
§ 364, ¶ P.

FORWARDING OF TRAFFIC,

Commission no jurisdiction over delay in, § 375, ¶ C.

F. O. B. SHIPMENTS,

demurrage on, § 294.

FREE PASSES.

See PASSES; FREE AND REDUCED-RATE PASSENGER TRANSPORTATION.

[References are to sections and paragraphs.]

FREE AND REDUCED-RATE PASSENGER TRANSPORTATION,

See PARTY-RATE TICKETS; EXCURSION TICKETS; COMMUTATION TICKETS; MILEAGE BOOKS AND TICKETS.

penalty of carrier for issuing or giving in violation of law, § 756.

penalty of person using free transportation in violation of law, § 757.

employe transferring pass to person not entitled to receive it, penalty for, § 757.

release of damages as consideration for issuance of passes, § 250, ¶ A.

conveyance of land to carrier as consideration for issuance of passes, § 250, ¶ B.

discrimination between ministers of different denominations in granting reduced fares, § 379, ¶ E.

evils of free transportation which were sought to be corrected by Act to Regulate Commerce, § 590.

unlawful for carriers to issue or give in interstate transportation, § 591.

destruction by carriers of records or memoranda relating to passes, § 626.

validity of stipulations in railway passes against liability for injury, § 625.

use of State passes in interstate journey, § 623.

miscellaneous persons not entitled to,

officers and employes of surety companies, § 620.

persons not in regular service of carrier, § 620.

car-lighting company employees, § 620.

representatives of correspondence schools, § 620.

agents of accident or life insurance companies, § 620.

agents of oil or lubricating companies, § 620.

carriers may grant reduced-rate transportation to persons entitled to free transportation, § 595.

forms of passes, § 596.

interchange of authorized passes by common carriers,

officers and families, § 597.

agents and families, § 597.

employees and families, § 597.

employees,

defined, § 594, ¶ A.

entitled to free transportation, § 598, ¶ A.

ex-employees traveling to enter service, § 598, ¶ B.

families of, § 598, ¶ C.

household effects of, § 598, ¶ D.

of railroad receivers, § 598, ¶ E.

[References are to sections and paragraphs.]

FREE AND REDUCED-RATE PASSENGER TRANSPORTATION—
Continued.

families,

defined, § 594, ¶ B.

of officers, agents and employees, entitled to free transportation, § 598, ¶ C.

of local attorneys, surgeons and persons not regularly employed by carrier not entitled to, § 594, ¶ C.

includes household servants, § 600.

officers,

entitled to free transportation, § 598, ¶ A.

families of, § 598, ¶ C.

household effects of, § 598, ¶ D.

of railroad receivers, § 598, ¶ E.

agents,

entitled to free transportation, § 598, ¶ A.

families of, § 598, ¶ C.

household effects of, § 598, ¶ D.

of railroad receivers, § 598, ¶ E.

excepted classes, who may legally receive, § 594.

surgeons,

may receive, § 594.

families of, not included, § 598, ¶ C.

physicians,

may receive, § 594.

families of, not entitled to, § 598, ¶ C.

attorneys at law,

may receive, § 594.

families of, not included, § 598, ¶ C.

ministers of religion,

may receive, § 594, § 603, ¶ A.

families of, not included, § 603, ¶ B.

clergymen,

may receive, § 594, § 603, ¶ A.

families of, not included, § 603, ¶ B.

Y. M. C. A., traveling secretary of railroad branch, § 594.

hospital inmates, § 594.

charitable institutions, inmates of, § 594.

indigent persons, § 594.

eleemosynary institutions, inmates of, § 594.

destitute persons, § 594.

homeless persons, § 594.

soldiers' homes, inmates of, § 594.

sailors' homes, inmates of, § 594.

[References are to sections and paragraphs.]

FREE AND REDUCED-RATE PASSENGER TRANSPORTATION—

Continued.

- household effects of employees, § 598, ¶ D.
 - household servants traveling with family, § 600.
 - servants traveling with family, § 600.
 - caretakers of,
 - live stock, § 601, ¶ A.
 - poultry, § 601, ¶ A.
 - fruit, § 601, ¶ A.
 - vegetables, § 601, ¶ B.
 - milk, § 601, ¶ C.
 - newspaper companies, § 601, ¶ D.
 - bees in hives, § 601, ¶ E.
 - live fish, § 601, ¶ F.
 - property transported for United States, State or Municipal governments, § 601, ¶ G.
 - property transported for charitable purposes, § 601, ¶ H.
 - property transported to or from fairs and expositions, § 601, ¶ I.
 - manner of issuing, § 601, ¶ J.
 - cross references in railroad and express tariffs, § 601, ¶ K.
 - return of, § 601, ¶ L.
 - shippers not entitled to, § 602.
 - dealers not entitled to, § 602.
 - charity workers, § 603, ¶ A.
 - railway-mail service employees, § 604.
 - subsidiary corporations,
 - officers, § 605.
 - employés, § 605.
 - construction and improvement of line of carrier,
 - material and supplies, § 607.
 - contractors and men engaged in work, § 607.
 - Government officers and families, not entitled to, § 609.
 - army officers not entitled to, § 609.
 - navy officers not entitled to, § 609.
 - Federal troops, may enjoy, § 608.
 - marine service, may enjoy, § 608.
 - news company employés, not entitled to, § 610.
 - public officials, not entitled to, § 611.
 - commercial travelers, not entitled to, § 612.
 - immigrants, § 613.
 - land explorers, not entitled to, § 614.
 - settlers, not entitled to, § 614.
 - land agents, not entitled to, § 615.
 - immigration agents, not entitled to, § 615.
- REGULATION—80.

[References are to sections and paragraphs.]

FREE AND REDUCED-RATE PASSENGER TRANSPORTATION—

Continued.

- officers and employés, not subject to act,
 - in general, § 616, ¶ A.
 - steamship companies, § 616, ¶ B.
 - baggage companies, § 616, ¶ C.
 - transfer and omnibus companies, § 616, ¶ C.
 - stage lines, § 616, ¶ C.
- transportation of employés of express companies over railroads, § 617.
- Chinese being deported, § 618.
- tailors taking measurements of employés of carrier for uniforms, § 619.
- postoffice inspectors entitled to, § 594.
- customs inspectors, entitled to, § 594.
- immigration inspectors, entitled to, § 594.
- baggage agents, entitled to, § 594.
- persons injured in wrecks, entitled to, § 594.
- nurses attending injured persons, entitled to, § 594.
- witnesses attending legal investigation in which carrier is interested, entitled to, § 594.
- general epidemic, free passes to provide relief from, § 594.
- pestilence, free passes to provide relief from, § 594.
- calamitous visitation, free passes to provide relief from, § 594.
- exchange of free transportation with telegraph, telephone and cable companies, § 606.

FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY,

- penalty of carrier for issuing or giving in violation of law, § 756.
- misdemeanor to offer, grant, give, solicit, accept or receive any rebate from published rate and penalty therefor, § 758.
- concession or discriminations and penalty therefor, § 758.
- for United States, State or Municipal governments,
 - in general, § 311, ¶ A.
 - fish and eggs for United States Commission of Fish and Fisheries, § 311, ¶ B.
 - municipal governments in adjacent foreign country, § 311, ¶ C.
- charitable purposes, § 312.
- fairs and expositions, § 313.
- free baggage with mileage tickets, § 314.
- fish and eggs for United States Commission of Fish and Fisheries, § 311, ¶ B.
- Indian supplies, § 311, ¶ C.
- municipal governments in adjacent foreign countries, § 311, ¶ B.
- eating houses operated by or for carriers, § 315, ¶ B.

[References are to sections and paragraphs.]

FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY—

Continued.

company material,

in general, § 315, ¶ A.

transportation for eating houses operated by carriers, § 314, ¶ B.
return of astray shipments, § 316.

rates on return shipments, § 317.

movement of shipments refused by consignee for damage in transit,
in general, § 318, ¶ A.

shipments refused by consignee, § 318, ¶ B.

shipments damaged in transit, § 318, ¶ C.

rules must be published via route over which shipment moved,
§ 318, ¶ B.

damaged in transit shipments left on hands of carrier, § 318,
¶ E.

trucks of cars destroyed on foreign lines, § 319.

coal used for steam purposes, § 320.

supplies of express companies, § 321.

express company supplies, § 321.

railway packages by express companies, § 322.

material for erection of refrigeration plant owned by carrier, § 323.

astray shipments returned, § 316.

exchange of free transportation with telegraph, telephone and
cable companies, § 605.

passes or franks of telegraph, telephone or cable companies, § 327.

contracts between telegraph, telephone and cable companies and
other common carriers for exchange of services, § 677.

FREE-TIME ALLOWANCE.

See DEMURRAGE OR "CAR-SERVICE."

FREIGHT CARS.

See CARS; CAR SUPPLY AND DISTRIBUTION; CAR SHORTAGE; WEIGHTS
AND WEIGHING; DEMURRAGE OR "CAR-SERVICE;" INTERCHANGE OF
CARS.

FREIGHT DEPOTS.

See STATIONS.

jurisdiction of Commission over time of closing, § 275, ¶ B.

FREIGHT RATES AND CHARGES.

See FREIGHT TARIFFS OR RATE SCHEDULES; LONG-AND-SHORT-HAUL
CLAUSE; FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY;
DEMURRAGE OR "CAR-SERVICE;" CLASSIFICATION OF FREIGHT;
CLASSIFICATIONS; EXPRESS COMPANY FREIGHT TARIFFS OR RATE

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

SCHEDULES; EXPRESS RATES; REFRIGERATION CHARGES; CAR PER DIEM CHARGE; REBATES AND CONCESSIONS; DISCRIMINATIONS; PREFERENCES AND ADVANTAGES; IMPORT TRAFFIC; EXPORT TRAFFIC; PAYMENT FOR TRANSPORTATION.

onus probandi as to reasonableness of increased rate, on common carrier, § 93, ¶ FF.

part of bill of lading relating to, § 121.

rates conditioned upon limited liability of carrier,

responsibility of carrier under released valuation clause, § 409, ¶ H.

when valid, § 310.

when void, § 310.

status of railroad rates before passage of Act, pp. 1-17.

kinds of rates and their usage, § 87.

local rate defined, § 87, ¶ A.

departure from published rate is essence of offense of rebating, § 392.

proportional rate defined, § 87, ¶ D.

arbitraries, defined, § 87, ¶ E.

differentials, defined, § 87, ¶ F.

class rates, defined, § 87, ¶ G.

commodity rate, defined, § 87, ¶ H.

mixed shipments, rates for, § 87, ¶ I.

basing point system of rate-making, § 87, ¶ J.

duty of carrier to initiate, § 88.

elements to be considered in making,

See "FACTORS."

factors to be considered in making,

value,

of service to shipper, § 89, ¶ A.

of service against cost of service, § 67, ¶ B.

of commodity transported, § 89, ¶ D.

of railroad investment, § 89, ¶ J.

cost,

of service to carrier, § 89, ¶ B.

of construction, maintenance and operation of road, § 89, ¶ J.

of production to manufacturer not proper consideration, § 89, ¶ N.

risk, as element, § 89, ¶ E.

volume of traffic, as element, § 89, ¶ F.

weight of article, as element, § 89, ¶ G.

bulk of article, as element, § 89, ¶ G.

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

distance, as element, § 89, ¶ H.

competition,

See "LONG-AND-SHORT-HAUL CLAUSE."

property of shipper not proper consideration in making, § 89,

¶ K.

right of carrier to share in general prosperity of country, § 89,

¶ L.

carrier may not adjust rates to preserve profit to shipper, § 89,

¶ M.

adjustment of rates to induce movement of traffic, § 89, ¶ O.

low rates to take care of empty car movement, § 89, ¶ P.

proportion as element, § 89, ¶ Q.

relation between articles transported, § 89, ¶ R.

use of classification in rate-making and elements to be considered in fixing same,

See "CLASSIFICATION OF FREIGHT."

classification in rate-making and elements to be considered in making same,

See "CLASSIFICATION OF FREIGHT."

advancing rates, methods of, § 91.

must be just and reasonable,

mandate of statute, § 92, ¶ A.

meaning of terms "just" and "reasonable," § 92, ¶ B.

duty of carriers to establish just and reasonable regulations affecting rates, § 94.

reasonableness of rates,

in general, § 93, ¶ A.

lower rate for carload than for less-than-carload quantity, § 93,

¶ B.

minimum charge for transportation of less-than-carload shipments, § 93, ¶ C.

any-quantity rates, § 93, ¶ D.

train-load rates, § 93, ¶ E.

released rates,

See "LIMITATION OF CARRIER'S LIABILITY."

higher rates when shipments are tendered with other than uniform bill of lading, § 93, ¶ F

lower rates for longer than for shorter haul over same line, in same direction, the shorter being included within longer distance,

See "LONG-AND-SHORT-HAUL CLAUSE."

higher rate when freight is shipped collect than when prepaid, § 93, ¶ I.

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

through rate which exceeds a combination of locals, § 93, ¶ J.
 through rate lower than combination of locals, § 93, ¶ K.
 higher rate over several carriers than over single line, § 93, ¶ L.
 change in, which disturbs relative rates in large territory,
 § 93, ¶ M.
 rates established by concert of action between carriers, § 93,
 ¶ N.
 higher rates on perishable traffic, § 93, ¶ O.
 lower rates for low grade traffic, § 93, ¶ P.
 low rates for long-haul traffic, § 93, ¶ Q.
 carriers may charge higher rates to undeveloped territory,
 § 93, ¶ R.
 rates established to develop a particular industry, § 93, ¶ S.
 desire of carrier to keep certain traffic upon its line, § 93, ¶ T.
 tonnage shipped by particular firm, § 93, ¶ U.
 rates fixed according to usage of commodity, unlawful, § 93, ¶ V.
 equalizing rates of different carriers, § 93, ¶ W.
 lower rates for inland movement of import or export traffic
 than for domestic traffic.

See IMPORT TRAFFIC; EXPORT TRAFFIC.

imported merchandise not entitled to inland proportional rate
 when transportation from port is purely local, § 93, ¶ Y.
 graduated rates, § 93, ¶ Z.
 group or blanket rates, § 93, ¶ AA.
 rate-per-ton-per-mile rule, § 93, ¶ BB.
 onus probandi as to reasonableness of increased rate on com-
 mon carrier, § 93, ¶ FF.
 express rates, § 93, ¶ CC.
 filing schedule of rates with Commission raises no presump-
 tion of reasonableness, § 93, ¶ DD.
 enforcing rules and regulations not shown in published tariffs,
 § 93, ¶ EE.
 presumption where long-established rate is advanced for short
 period and then reduced to former basis, § 409, ¶ D.
 question one of fact, § 92, ¶ A.
 absolute equality not attainable, § 93, ¶ BB.
 regulations and practices affecting rates, preference given to
 hearings involving, § 792.

comparison of rates.

necessity for, § 95, ¶ A.
 on different lines in different sections of the country, § 95, ¶ B.
 on different branches or lines of same carrier, § 95, ¶ C.
 on rival lines, § 95, ¶ D.

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

- division of through rate no criterion by which to measure local rates, § 95, ¶ E.
- division of through rate not conclusive evidence of its reasonableness, § 95, ¶ F.
- rates established by State authority as standards in fixing interstate rates, § 95, ¶ G.
- relation between water and rail transportation, § 95, ¶ H.
- duty to carriers to quote rates to shippers, § 110.
- must apply according to movement, § 96.
- through rates,
 - defined, § 87, ¶ C.
 - but one legal rate can exist between two points at any time, § 105, ¶ B.
 - to and from Porto Rican ports, § 105, ¶ H.
 - legal rate, is through rate in effect at time shipment is received by carrier, § 105, ¶ C.
 - carrier may specify basing points or factors for constructing combination rate, § 105, ¶ D.
 - rate to apply where no specific method of construction is provided for, § 105, ¶ E.
 - right of shipper to consign freight to given point and reship, § 105, ¶ F.
 - which exceed combination of locals prima facie unreasonable, § 93, ¶ J.
 - lower than combination of locals, § 93, ¶ K.
 - right of terminal railroad to enjoy division of, § 337.
 - rates not on file with Commission, not lawful factor in constructing, § 97, ¶ I.
- higher rate over route composed of two or more carriers than over single line, § 93, ¶ L.
- where a change in rates will disturb relative rates in large extent of territory, § 93, ¶ M.
- rates established by concert of action between carriers, § 93, ¶ N.
- higher rates on perishable traffic, § 93, ¶ O.
- carrier serving undeveloped territory entitled to higher rates, § 93, ¶ R.
- rates established to develop a particular industry, § 93, ¶ S.
- desire of carrier to keep certain traffic upon its line, § 93, ¶ T.
- tonnage shipped by a particular firm, § 93, ¶ U.
- rates fixed according to usage of commodity or "business motive" of shipper unreasonable, § 93, ¶ V.
- joint rates,
 - defined, § 87, ¶ B.

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

matter of agreement between connecting carriers, § 97, ¶ A.
 combination of, to common point, and local rate beyond, § 97,
 ¶ G.

to and from Porto Rican ports, § 97, ¶ H.

carrier may not deny benefit of, to manufacturers on connecting lines in order to foster its own industries, § 97, ¶ J.
 parties not competent in law to establish, § 97, ¶ K.

responsibility of carriers participating in, § 409, ¶ G.

not nullified by failure of carriers to agree upon divisions, § 98.

published rates not to be deviated from, § 102.

maintenance of reduced rates after complaint filed with Commission,

in formal cases, § 104, ¶ A.

in special reparation cases, § 104, ¶ B.

date from which time runs, § 104, ¶ C.

effect of private agreement between carrier and shipper concerning, § 105.

performance of transportation service without rates on file with Commission, § 106.

territorial divisions of United States for rate-making purposes,

Central Freight Association Territory, § 107, ¶ A.

Percentage Basis Territory, § 107, ¶ B.

Joint Traffic Association Territory, § 107, ¶ C.

construction of rates from percentage-basis-territory points to Eastern cities, § 108.

jurisdiction of Commission over rates,

duty of Commission in general in respect to, § 109, ¶ A.

may prescribe just and reasonable rates to be observed as maximum, § 109, ¶ B.

may prescribe just and reasonable regulations or practices, § 109, ¶ D.

may order carriers to cease and desist from full extent of violations found, § 109, ¶ F.

order of, shall continue in force not exceeding two years, § 109, ¶ G.

may establish joint rates applicable to through routes, § 109, ¶ H.

no power to prescribe rates for future, § 109, ¶ K.

power to relieve from operation of long-and-short-haul clause,
 See "LONG-AND-SHORT-HAUL CLAUSE."

jurisdiction of Commission over rates,

may make order prescribing same rate for similar service to other shippers, § 109, ¶ N.

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

- to establish joint through rates and divisions thereof, § 109, ¶ O.
- joint through rates from United States to adjacent foreign country, § 109, ¶ P.
- power of Commission to restrain enforcement of new rates pending investigation, § 109, ¶ Q.
- may not establish through rates in connection with street electric passenger railways, § 109, ¶ I.
- no authority to establish rates with independent water carriers, § 109, ¶ J.
- may upon its own initiative enter upon hearing concerning propriety of new rate, § 109, ¶ C.
- primary jurisdiction over reasonableness of rates, § 109, ¶ E.
- restraint of advance in rates pending proceedings before Commission, § 102.
- low rates,
 - to take care of empty car movements, § 89, ¶ P.
 - for low grade traffic, § 93, ¶ P.
 - for carriage of long-haul traffic, § 93, ¶ Q.
- lower rate on carload than less-than-carload quantities, § 93, ¶ B.
- rules and regulations and practices affecting,
 - not shown in published tariff, enforcement of, unreasonable, § 93, ¶ EE.
 - must be shown in published tariffs, § 461.
 - must be just and reasonable, § 94.
- value of service as element in rate-making, § 89, ¶ A.
- cost of service as element in rate-making, § 89, ¶ B.
- value of service against cost of service principle in rate-making, § 67, ¶ B.
- value of commodity as element in rate-making, § 89, ¶ D.
- risk as element in rate-making, § 89, ¶ E.
- volume of traffic as element in rate-making, § 89, ¶ F.
- weight of article as element in rate-making, § 89, ¶ G.
- bulk of article as element in rate-making, § 89, ¶ G.
- distance as element in rate-making, § 89, ¶ H.
- competition as factor in rate-making.
- See "LONG-AND-SHORT-HAUL CLAUSE."
- value of railroad investment to be considered in fixing rates, § 89, ¶ J.
- cost of construction, maintenance and operation of road as elements in rate-making, § 89, ¶ J.
- railroads entitled to earn six percent income on fair valuation of property, § 89, ¶ J.

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

- carriers may not graduate their rates in proportion to prosperity of shipper, § 89, ¶ K.
- right of railroads to share in general prosperity of country, § 89, ¶ L.
- carriers no right to adjust rates to preserve commercial profit to manufacturer, § 89, ¶ M.
- cost of production to manufacturer not proper consideration, § 89, ¶ N.
- employés of Commission in charge of, § 14, ¶ B.
- adjustment of rates to induce movement of traffic, § 89, ¶ O.
- proportion as element in fixing rates, § 89, ¶ Q.
- relation between articles transported, § 89, ¶ R.
- methods of advancing rates, § 91.
- increase in revenue, how effected, § 91.
- lower rate for carload than for less-than-carload quantities, § 93, ¶ B.
- minimum charge for transportation of less-than-carload shipments, § 93, ¶ C. ¶
- any-quantity rates, § 93, ¶ D.
- train-load rates, § 93, ¶ E.
- higher rates when shipments are tendered with other than uniform bill of lading, § 93, ¶ F.
- lower rate for longer than for shorter haul over same line in same direction, the shorter being included in longer distance,
See "LONG-AND-SHORT-HAUL CLAUSE."
- graduated rates, § 93, ¶ Z.
- group or "blanket" rates, § 93, ¶ AA.
- rate-per-ton-per-mile rule, § 93, ¶ BB.
- consideration in determining reasonableness of express rates, § 93, ¶ CC.
- express rates, considerations determining reasonableness of, § 93, ¶ CC.
- filing schedule of rates with Commission raises no presumption of reasonableness, § 93, ¶ DD.
- enforcement of rules and regulations not shown in published tariff as affecting the reasonableness of rate, § 93, ¶ EE.
- presumption where long-established rate is advanced for short period and then reduced to former basis, § 409, ¶ D.
- division of through rate,
 - no criterion by which to measure local rates, § 95, ¶ E.
 - not conclusive evidence of reasonableness of through rate itself, § 95, ¶ F.
 - failure of carriers to agree upon, does not nullify rate, § 98.

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

right of terminal railroad to enjoy, § 337.

to boat line controlled by shipper, § 340.

power of Commission to establish, § 109, ¶ O.

Commission may prescribe proportion where carriers fail to agree, § 672.

rates established by State authority as standards in fixing interstate rates, § 95, ¶ G.

relation,

between articles transported, § 89, ¶ R.

between water and rail transportation, § 95, ¶ H.

but one legal rate can exist between two points at any time, § 97, ¶ B.

legal rate applicable to interstate shipment is through rate in effect at time shipment is received by carrier, § 97, ¶ C.

carriers may specify basing points or factors for constructing combination rate, § 97, ¶ D.

rate to apply where no specific method of constructing through rate is provided for, § 97, ¶ E.

right of shipper to consign freight to a given point, assume custody and reship, § 97, ¶ F.

combination of joint rate to common and local rate beyond, § 97, ¶ G.

carrier may not deny benefit of joint rate to manufacturers on connecting lines in order to foster industries on its own line, § 97, ¶ J.

Central Freight Association Territory, defined, § 107, ¶ A.

Percentage Basis Territory, defined, § 107, ¶ B.

Joint Traffic Association Territory, defined, § 107, ¶ C.

discrimination in rates,

See "DISCRIMINATIONS, PREFERENCES AND ADVANTAGES."

free transportation of property,

See "FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY."

reduced-rate transportation,

See "FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY."

publication of rates,

See "FREIGHT TARIFFS OR RATE SCHEDULES."

posting rates at stations,

See "FREIGHT TARIFFS OR RATE SCHEDULES."

filing rates with Commission,

See "FREIGHT TARIFFS OR RATE SCHEDULES."

long-and-short-haul clause and relief from operation thereof,

See "LONG-AND-SHORT-HAUL CLAUSE."

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

rebates and penalty therefor,

See "REBATES AND CONCESSIONS."

concessions and penalty therefor,

See "REBATES AND CONCESSIONS."

assessing freight charges on purported instead of actual weights of shipments, § 144.

right of carrier to charge different rates for hauling different classes of private cars, § 163, ¶ K.

rates based on declared valuation, §§ 305, 409, ¶ H.

obligation of carrier to collect its tariff rate upon delivery of shipment, § 302.

released rates,

when condition is valid, § 310.

when condition is void, § 310.

refrigeration charges,

See "REFRIGERATOR CHARGES."

higher rate resulting in consequence of shipper's routing, § 197.

different kinds of rates and their usage,

local, § 87, ¶ A.

joint, § 87, ¶ B.

through, § 87, ¶ C.

proportional, § 87, ¶ D.

arbitraries, § 87, ¶ E.

differentials, § 87, ¶ F.

class, § 87, ¶ G.

commodity, § 87, ¶ H.

rates for mixed shipments, § 87, ¶ I.

basing point system of rate-making, § 87, ¶ J.

contract for different rate than that published in tariff, invalid, § 242.

ignorance of shippers as to published rate does not validate contract for a lower rate, § 243.

mistake by carrier's agent in quoting rate to shipper, § 244.

contract to maintain established rate ineffective after higher rate established, § 246.

discrimination in assessment of,

See DISCRIMINATIONS, PREFERENCES AND ADVANTAGES.

not on file with Commission not lawful factors in constructing through charge § 97, ¶ I.

assessment of charges in excess of published schedule,

manner in which overcharges accrue, § 408, ¶ A.

measure of damages, § 408, ¶ B.

right of shipper to recover overcharges, § 408, ¶ C.

[References are to sections and paragraphs.]

FREIGHT RATES AND CHARGES—Continued.

- refund of transfer charges, § 408, ¶ D.
- assessment of unreasonable rates,
 - measure of recovery, § 409, ¶ A.
 - rate must have been unreasonable when paid to justify refund, § 409, ¶ B.
 - reduction in rate raises no presumption that former rate was unreasonable for purposes of reparation, § 409, ¶ C.
 - presumption where long-established rate is advanced for short period and then reduced to former basis, § 409, ¶ D.
 - enforcement of rules and regulations not shown in published tariff, § 93, ¶ EE.
 - right of shipper to recover damages sustained through his refusal to ship because of unreasonable rate, § 409, ¶ F.
 - responsibility of carriers participating in joint rate, § 409, ¶ G.
 - responsibility of carrier under released valuation clause, § 409, ¶ H.
- penalty,
 - carrier's refusal to quote rate to shipper, § 768.
 - failure to publish and file, § 766.
 - failure to observe published rates, § 758-766.

FREIGHT TARIFFS OR RATE SCHEDULES.

- See EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; CLASSIFICATIONS.
- as evidence, § 896, Rule XIII.
- complement of classifications, § 65.
- relation to classifications, § 65.
- regulations of Commission, § 16, ¶ B.
- enforcement of rules and regulations not shown in; unreasonable, § 93, ¶ EE.
- right of terminal railroads to participate in joint tariffs, § 337.
- failure of carrier to make reference in tariff to car-service tariff, § 283, ¶ B.
- rules governing movement of damaged and refused shipments must be published, § 318, ¶ D.
- damages resulting to shipper account failure of carrier to post rate schedule, § 422.
- refund where there is a clerical error in tariff resulting in higher rate, § 417.
- maxima rates not specific rates,
 - rates and their application must be specifically stated, § 507, ¶ A.
 - rates to and from intermediate points, § 507, ¶ B.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—*Continued.*

- specific joint through rates must be invariably applied, § 507, ¶ C.
- export and import traffic,
 - rates to be published and filed when inland rail carrier and ocean carrier are operating separately, § 506, ¶ A.
- joint through rate established between inland rail and ocean carriers, § 506, ¶ B.
- steamship charges may be shown in inland carriers' tariffs, § 506, ¶ C.
- statutory notice required, § 506, ¶ D.
- posting tariffs, § 506, ¶ E.
- lessee road not serving public as common carrier, § 505.
- water carriers,
 - inland, § 504, ¶ A.
 - ocean, § 504, ¶ B.
- publication of rates and charges,
 - mandate of statute, § 456, ¶ A.
 - joint tariffs must specify names of participating carriers, § 456, ¶ B.
 - presumption that rates have been duly published, § 456, ¶ C.
 - carrier's tariff making reference to tariff of competing carrier does not meet requirement of law, § 456, ¶ D.
 - importance of proper publicity in rates, § 456, ¶ E.
- local tariffs should have I. C. C. number and be posted and filed, § 503.
- state rates used for interstate shipments must be posted and filed, § 502.
- tariffs cannot be given retroactive effect, § 501.
- maintenance of relative adjustment to conform with formal order of Commission,
 - right of carrier party to case to adjust its rates, § 498, ¶ A.
 - carrier not party to case must secure special permission, § 498, ¶ B.
- rates for hauling private cars, § 499.
- industrial or terminal roads as parties to joint tariffs, § 500.
- filing tariffs, classifications, exception sheets, supplements and concurrences,
 - mandate of Act, § 457, ¶ A.
 - concurrence of participating carriers, § 457, ¶ B.
 - filing by proper officer or designated agent, § 457, ¶ C.
 - two copies of all tariffs must be filed with Commission, § 457, ¶ D.
 - how tariffs filed with Commission must be addressed, § 457, ¶ E.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—Continued.

- must be delivered to Commission free from all charges or claims for postage, § 457, ¶ F.
- must be delivered to Commission within full statutory time, § 457, ¶ G.
- disposition of tariffs received by Commission too late to give statutory notice, § 457, ¶ H.
- filing schedule of rates with Commission raises no presumption of reasonableness, § 93, ¶ DD.
- receipt by Commission of tariffs does not relieve carriers for liability for violations of Act, § 495.
- posting of tariffs,
 - mandate of statute, § 458, ¶ A.
 - purpose of law requiring posting, § 458, ¶ B.
 - rules governing posting at stations, § 458, ¶ C.
 - effect of failure to post on legality of rate, § 458, ¶ D.
 - lawfully published rate binding on both shipper and carrier, § 458, ¶ E.
 - damages resulting to shipper account failure to post, § 458, ¶ F.
 - notice placed in depot referring shipper to agent, § 458, ¶ G.
 - tariffs on export and import traffic, § 506, ¶ E.
- freight from United States through foreign country to any place in United States,
 - duty of carriers to print and post schedules, § 486, ¶ A.
 - freight subject to customs duties in case of failure to publish through rates, § 486, ¶ B.
- notice required for publication of rates,
 - statutory notice, § 460, ¶ A.
 - rate changes filed and published must become effective on thirty days' notice, § 460, ¶ B.
 - power of Commission to allow changes on less than statutory notice, § 460, ¶ C.
 - power of Commission to reject schedules not giving lawful notice of effective date, § 460, ¶ D.
 - request for permission to amend on less than statutory notice, § 460, ¶ E.
 - full notice given by competing carrier, § 460, ¶ F.
 - amendment of joint tariff on less than statutory notice, § 460, ¶ G.
 - permission to change rates on short notice limited to emergency or necessity, § 460, ¶ H.
 - reduction of joint rate to equal sum of locals, § 460, ¶ I.
 - tariffs naming rates to and from points on newly constructed lines, § 460, ¶ J.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—Continued.

- transportation of circus outfits, § 460, ¶ K.
- schedules rejected by Commission, § 494.
- numerical order of I. C. C. numbers or explanation of missing numbers required, § 487.
- withdrawal of filed tariffs not permitted, § 488.
- rules and regulations affecting rates must be shown in tariffs, mandate of statute, § 461, ¶ A.
- duty of carrier to establish just and reasonable regulations, § 461, ¶ B.
- purpose of requirement, § 461, ¶ C.
- general rules of Commission, § 461, ¶ D.
- reconsignment privileges and rules, § 461, ¶ E.
- terminal charges, § 461, ¶ F.
- refrigeration charges, § 461, ¶ G.
- switching or terminal charges between carriers, § 493.
- demurrage on interstate shipments, § 461, ¶ I.
- transit privileges and rules, § 461, ¶ J.
- absorption of switching charge, § 461, ¶ K.
- maxima and minima weights, § 461, ¶ L.
- storage charges, § 461, ¶ M.
- drayage or transfer charges, § 461, ¶ N.
- allowances to shippers, § 461, ¶ O.
- rules governing loading and unloading of freight, § 461, ¶ P.
- circulars announcing compliance with orders of court, § 497.
- rates prescribed in Commission's decisions must be promulgated in tariffs, § 496.
- receipt by Commission of tariffs does not relieve carriers from liability for violation of Act, § 495.
- equalizing rules of tariffs, § 489.
- carriers prohibited from engaging in transportation unless they file and publish rates, § 462.
- distinguishing between shipments handled by steam and electrical power, § 463.
- phraseology used in tariffs,
 - must be plain and intelligible, § 464, ¶ A.
 - tariffs construed according to their language, § 464, ¶ B.
 - technical terms and phrases defined, § 464, ¶ C.
 - limiting use of terms "common points," "grain products," etc., § 464, ¶ D.
 - improper and unlawful provisions, § 464, ¶ E.
- different kinds of tariffs defined,
 - local, § 465, ¶ A.
 - joint, § 465, ¶ B.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—*Continued.*

- basing, § 465, ¶ C.
- interdivision, § 465, ¶ D.
- proportional, § 465, ¶ E.
- distance, § 465, ¶ F.
- must be printed, § 466.
- form and size, § 467.
- information to be shown on title-page,
 - name of carrier, § 468, ¶ A.
 - I. C. C. number and cancellation, § 468, ¶ B.
 - kind of tariff, § 468, ¶ C.
 - territory, § 468, ¶ D.
 - reference to governing classification, § 468, ¶ E.
 - dates, § 468, ¶ F.
 - expiration notice, § 468, ¶ G.
 - statutory notice or authority for shorter notice, § 468, ¶ H.
 - notice of supplements, § 468, ¶ I.
 - officer issuing, § 468, ¶ J.
- effective dates of tariffs and classifications,
 - tariff that fails to state effective date unlawful, § 474, ¶ A.
 - effective date of tariff used before August 28, 1906, but filed thereafter, § 474, ¶ B.
 - tariffs taking effect on Sunday, § 474, ¶ C.
 - effective date of tariff which bore no effective date filed by carrier when first coming under law, § 474, ¶ D.
- express company tariffs,
 - See EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.
- carriers cannot advance charges to water carriers unless they are parties to tariff, § 510.
- certified copies as prima facie evidence, § 509.
- information that tariffs shall contain,
 - table of contents, § 469, ¶ A.
 - participating carriers, § 469, ¶ B.
 - index of commodities, § 469, ¶ C.
 - index to general commodity tariff, § 469, ¶ D.
 - commodity item containing list of articles, § 469, ¶ E.
 - must contain all rates on commodities included in tariff and between same points, § 469, ¶ F.
 - alphabetical arrangement of commodity rates, § 469, ¶ G.
 - commodity rate not indexed, not lawful rate, § 469, ¶ H.
 - index of stations, § 469, ¶ I.
 - alphabetical arrangement of points in rate tables, § 469, ¶ J.
 - geographical description, § 469, ¶ K.
 - territorial or group descriptions, § 469, ¶ L.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—Continued.

- reference marks and abbreviations, § 469, ¶ M.
- list of exceptions, § 469, ¶ N.
- explanatory statements, § 469, ¶ O.
- rules governing tariff, § 469, ¶ P.
- no rule shall authorize substituting rate found in other tariff, § 469, ¶ Q.
- rule for explosives, § 469, R.
- rules filed and posted may be referred to in other schedules, § 469, ¶ S.
- rate tables, § 469, ¶ T.
- routes, § 469, ¶ U.
- tariff not governed by classification except when so specified, § 470.
- commodity rates must be specific, § 471.
- alternative use of class or commodity rates,
 - alternative rates in sectional tariff, § 472, ¶ A.
 - carriers may not reproduce other carriers' rates for alternative use, § 472, ¶ B.
 - rule where tariff does not provide for alternative use of rates, § 472, ¶ C.
 - rule for tariff which does provide for alternative use of rates, § 472, ¶ D.
 - rule in classification, § 472, ¶ E.
- copies of tariffs to be preserved as public records in custody of Secretary of Commission, § 508.
- failure of carrier to publish rates a misdemeanor and penalty therefor, § 766.
- departure from published tariff a misdemeanor and penalty therefor, § 766.
- amendments and supplements to,
 - defined, § 473, ¶ A.
 - form, § 473, ¶ A.
 - participating carriers, § 473, ¶ B.
 - number and cancellations, § 473, ¶ C.
 - effective date of reissued items and I. C. C. reference, § 473, ¶ D.
 - number of supplements in effect at one time, § 473, ¶ E.
 - amount of matter supplement may contain, § 473, ¶ F.
 - supplement exceeding limit of matter subject to rejection, § 473, ¶ G.
 - amendments to loose leaf tariffs, § 473, ¶ H.
 - no supplements to loose leaf tariffs, § 473, ¶ H.
 - supplements to periodical tariffs, § 473, ¶ I.
 - index to supplements, § 473, ¶ J.
 - supplement filed and not yet effective, § 473, ¶ K.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—*Continued.*

- withdrawal and adoption of tariffs when carrier is absorbed by another, § 473, ¶ L.
- withdrawal and adoption of tariffs when road is transferred to another company, § 473, ¶ M.
- adoption of tariffs issued by other carrier or joint agent, § 473, ¶ N.
- adoption notice filed by receiver, § 473, ¶ O.
- concurrences and powers of attorney of old carrier must be replaced by new carrier, § 473, ¶ P.
- rail-and-water and all-water rates,
 - notation of title-page, § 473, ¶ A.
 - rule providing for suspension and restoration of rates, § 493, ¶ B.
 - routes other than Great Lakes may suspend or restore on one day's notice, § 493, ¶ C.
 - supplements may contain what, § 493, ¶ D.
 - suspended tariffs may be reissued or amended, § 493, ¶ E.
 - storage and transit privileges, § 493, ¶ F.
- index of freight tariffs,
 - carrier must publish complete index of tariffs, § 492, ¶ A.
 - arrangement of, § 492, ¶ B.
 - revision and supplements, § 492, ¶ C.
 - notation on title-page, § 492, ¶ D.
 - date of issue but no effective date, § 492, ¶ E.
- distance tariffs,
 - may be issued when no other rates are provided, § 481, ¶ A.
 - notation on, § 481, ¶ B.
 - may be included in tariff of specific rates, § 481, ¶ C.
 - official list of points and distances, § 481, ¶ D.
- fast freight line guide books,
 - issuance, § 482, ¶ A.
 - tariff may refer to, § 481, ¶ B.
- cancellation of tariffs or parts,
 - general principles, § 475, ¶ A.
 - tariff or supplement shall specify cancellations, § 475, ¶ B.
 - must be by authorized agent, § 475, ¶ C.
 - concurrence does not confer authority to cancel, § 475, ¶ D.
 - notice must be by supplement, § 475, ¶ E.
 - notice shall specify where rates shall thereafter be found, § 475, ¶ F.
 - when joint agent publishes new rate between two points without canceling old rate published by one of the carriers, § 475, ¶ G.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—Continued.

- cancellation of tariff does not impair rights of shipper which accrued thereunder, § 475, ¶ H.
- joint tariffs issued by joint agents,
 - right of joint agent to issue joint tariffs, § 476, ¶ A.
 - I. C. C. numbers and filing, § 476, ¶ B.
 - agent acts only for carriers from which he has authority, § 476, ¶ C.
 - principal bound by act of agent, § 476, ¶ D.
 - cross exchange of concurrences not required, § 476, ¶ D.
 - list of participating carriers, § 476, ¶ E.
- transportation for United States, State or municipal governments, § 485.
- agents authorized to issue and file tariffs and classifications,
 - notice of authorization and acceptance must be filed, § 477, ¶ A.
 - form of appointment, § 477, ¶ B.
 - cross exchange of concurrences avoided, § 477, ¶ C.
 - authority to agent may be revoked or transferred, § 477, ¶ D.
 - authorizations and concurrences must be filed, § 477, ¶ E.
 - joint agent will use own I. C. C. serial number, § 477, ¶ F.
 - tariffs issued by carrier under concurrences will be filed by it for all concurring, § 477, ¶ G.
 - copies of joint publication to every participant, § 477, ¶ H.
 - carrier must not publish rates conflicting with or duplicating rates published by agent, § 477, ¶ I.
 - when agent files class but not commodity rates, § 477, ¶ J.
 - when agent publishes part but not all commodity rates, § 477, ¶ K.
 - carrier may grant authority to joint agent to publish and file classifications, § 477, ¶ L.
 - list of participating carriers, § 477, ¶ M.
 - I. C. C. numbers of classifications issued by joint agents, § 477, ¶ N.
 - filing of classifications issued by joint agents, § 477, ¶ O.
 - if carrier does not authorize agent to file classification carrier is bound by statutory notice, § 477, ¶ P.
- responsibility of carriers under tariffs,
 - old system of concurrences, § 490, ¶ A.
 - under tariffs filed prior to May 1, 1902, § 490, ¶ B.
 - carrier not bound by being named as participant in tariff without authority, § 490, ¶ C.
 - tariffs lawful as to carriers shown as participants under lawful authorizations, § 490, ¶ D.
 - tariffs unlawful as to carriers named as participants without lawful authorizations, § 490, ¶ D.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—*Continued.*

- responsibility for unlawful incorporation of carrier in tariff, § 490, ¶ E.
- policy of Commission on complaints, § 490, ¶ F.
- concurrence by carriers in tariffs,
 - mandate of statute, § 478, ¶ A.
 - concurrence better than power of attorney, § 478, ¶ B.
 - concurrence must be given to carriers named therein, § 478, ¶ C.
 - size of paper, § 478, ¶ D.
 - separate concurrences for freight and passenger tariffs, § 478, ¶ E.
 - forms of concurrences, § 478, ¶¶ F, G, H, I, J, K.
 - number of concurrences and authorization, § 478, ¶ L.
 - revocation effective, § 478, ¶ M.
 - subsidiary or small line tariffs, § 478, ¶ N.
 - conflicting authority to be avoided, § 478, ¶ O.
 - carrier issuing authority or concurrence not relieved from duty of posting, § 478, ¶ P.
 - use of consolidated concurrence, § 478, ¶ Q.
 - tariffs not concurred in are unlawful, § 478, ¶ R.
 - concurrence in tariffs of carriers in adjacent foreign countries, § 478, ¶ S.
- letter of transmittal accompanying tariffs filed with Commission, § 479.
- basing or proportional tariffs must be specific, § 480.
- tank line gauge books, § 483.
- transportation of explosives, § 484.
- switching or terminal charges between carriers,
 - joint rate between connecting carrier and switching or terminal road, § 491, ¶ A.
 - switching or terminal road must file all charges or regulations applied to interstate shipments, § 491, ¶ B.
 - where switching or terminal road's charges are added to rate, § 491, ¶ C.
 - where switching or terminal road's charges are absorbed by connecting carrier, § 491, ¶ D.
 - charges covering switching service mutually performed by connecting carriers, § 491, ¶ E.
- jurisdiction of Commission,
 - no authority to establish general rate schedules, § 109, ¶ M.
 - publication, posting, and filing, § 461.
 - may reject schedules which do not give lawful notice of effective date, § 460, ¶ D.

[References are to sections and paragraphs.]

FREIGHT TARIFFS OR RATE SCHEDULES—Continued.

penalties,

departure from published tariff, § 758-766.

failure to publish rates, § 766.

failure to comply with tariff regulation of Commission, § 767.

FRUIT,

See "PERISHABLE FREIGHT."

damages to fruit by delayed notice of arrival at destination, § 428.

passes to caretakers of, § 601, ¶ A.

FULMINATE,

unlawful to transport in bulk, § 449.

regulations for transportation of, § 455.

FUZES,

regulations for transportation of, § 455.

G

GAS,

transportation of natural and artificial.

excepted from provisions of Interstate Commerce Act, § 45.

GAUGE BOOKS.

tank line, § 483.

GENERAL SESSIONS.

of Commission, § 11, ¶ A.

GENESIS,

of Commission, § 2.

GOVERNMENT-AIDED RAILROAD AND TELEGRAPH COMPANIES,

equal facilities required from, § 746.

discrimination forbidden, § 746.

complaints to Commission, involving, § 747.

duty of Commission when complaint is made, § 748.

enforcement of orders of Commission against, § 749.

Commission may institute inquiries as to management, § 750.

penalties for failure to comply with orders of Commission, § 751.

action for damages may be brought against, § 752.

were required to file copies of their contracts with Commission,
§ 753.

reports to Commission,

duty to file annual reports, § 754, ¶ A.

special reports, § 754, ¶ B.

[References are to sections and paragraphs.]

GOVERNMENT-AIDED RAILROAD AND TELEGRAPH COMPANIES

—Continued.

penalty for refusal to make, § 754, ¶ D.

authority of Commission to prescribe system of reports, § 754,
¶ C.

duty of Commission to inform attorney-general of violations of
Act, § 755.

GRADUATED RATES.

reasonableness of, § 93, ¶ Z.

GRAIN AND GRAIN PRODUCTS.

See ELEVATION; MILLING AND MANUFACTURING IN TRANSIT.

relation between from rate-making standpoint, § 89, ¶ R.

GRAIN DOORS.

allowances for doors furnished by shippers, § 334.

rules governing allowances for, must be shown in published tariff,
§ 461, ¶ O.

GROUP POINTS,

discrimination between, § 375, ¶ G.

GROUP RATES.

reasonableness of, § 93, ¶ AA, § 364, ¶ M.

GUIDE BOOKS,

fast freight line.

issuance of, § 482, ¶ A.

tariffs may refer to, § 482, ¶ B.

H

HEARINGS,

rule as to, § 806, Rule X.

HEPBURN BILL.

effective date of, § 306, note 1.

Carmack Amendment, constitutionality of, § 309.

HIGH EXPLOSIVES.

See EXPLOSIVES.

defined, § 455.

HISTORICAL ANTECEDENTS,

facts leading to passage of Act to Regulate Commerce, pp. 1-17.

HOMELESS PERSONS,

free passes, § 594.

[References are to sections and paragraphs.]

HOSPITALS,

free passes to inmates of, § 594.

HOTEL ACCOMMODATIONS,

passenger tickets including, § 577.

shown in passenger tariffs, § 638, ¶ Q.

HOURS-OF-SERVICE LAW,

reports of carriers under, §§ 712, 736.

context of the law, § 717.

purpose of the law, § 718.

passage of the Act, § 719.

scope of the law, § 720.

sixteen hours the maximum continuous service of trainmen, § 721.

ten consecutive hours off duty after having been sixteen consecutive hours on duty, § 722.

eight consecutive off duty after having been on duty sixteen hours in the aggregate, § 723.

service hours of telegraph and telephone operators, § 724.

twenty-four hour service period defined, § 725.

term "employé" defined, § 726.

employés of carriers to whom provisions of law are not applicable, § 727.

employés delayed in the service caused by casualty or unavoidable accident or act of God, § 728.

employés who are "deadheading" not within meaning of law, § 729.

ferry employés, § 731.

electric lines which are interstate carriers, § 730.

crews of wrecking or relief trains, § 732.

jurisdiction of Commission over enforcement of law, § 733.

administrative relief from requirements of law, § 734.

penalty for violation, § 778.

HOUSEHOLD GOODS,

lower rates on immigrant movables than on, § 364, ¶ G.

free transportation of household effects of railroad employés, § 598, ¶ D.

HOUSEHOLD SERVANTS,

of railroad employé, traveling with family entitled to free transportation, § 600.

I

ICING,

See REFRIGERATION; VENTILATION; REFRIGERATOR CARS.

[References are to sections and paragraphs.]

ILLNESS.

- stop-over privilege on limited tickets in case of, § 570, ¶ A.
- validating round-trip tickets in case of, § 568, ¶ B.
- stop-over privilege on limited tickets in case of illness extend to members of family of passenger traveling together, § 570, ¶ B.

IMMIGRANTS,

- See IMMIGRANT MOVABLES.
- agreements between carriers apportioning traffic, § 690.
- special rates on immigration traffic, § 379, ¶ D.
- reduced rates to, § 613.

IMMIGRANT AGENTS,

- not entitled to free passes, § 615.

IMMIGRANT MOVABLES,

- lower rates on than on household goods generally, § 364, ¶ G.

IMMIGRATION INSPECTORS,

- free passes, § 594.

IMMUNITY,

- to witnesses testifying before Commission, § 795, ¶ N.

IMPORT RATES.

- See IMPORT TRAFFIC.

IMPORT TRAFFIC.

- bills of lading covering, § 127.
- imported merchandise not entitled to inland proportional rate when transportation from port is purely local, § 93, ¶ Y.
- higher domestic rates than inland division of import rates, § 364, ¶ J.
- tariffs covering,
 - express, 506.
 - passenger, § 662.
 - freight, 506.

INCOME,

- railroads entitled to earn annual income of six percent on fair valuation, § 89, ¶ J.

INCRIMINATING TESTIMONY,

- witnesses before Commission, § 795, ¶ M.

INDEMNITY,

- relinquishment of lien of carrier upon being indemnified against loss, § 301, ¶ B.
- bond to indemnify carrier against loss in establishment of through route, § 182.

[References are to sections and paragraphs.]

INDEX TO TARIFFS,

See PASSENGER TARIFFS OR FARE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

INDIAN SUPPLIES,

special rates for, § 311, ¶ C.

• INDIGENT PERSONS,

free passes to, § 594.

INDUSTRIAL RAILROADS,

See TERMINAL RAILROADS.

INDUSTRY,

rates established to develop a particular, § 93, ¶ S.

INFORMAL COMPLAINTS,

before Commission, § 782, ¶ C.

docket of, § 284, ¶ B.

special reparation on, § 782, ¶ C.

INFORMATION,

rule as to information to parties, § 806, Rule XX.

power of Commission to demand, § 801.

INLAND WATER CARRIERS,

not subject to jurisdiction of Commission, § 57.

only subject to jurisdiction of Commission in respect to traffic transported under common control, management, or arrangement with rail carriers, § 47.

INLAND WATER TRANSPORTATION,

when subject to regulation of Commission, § 47.

extent of traffic subject to Act to Regulate Commerce, § 47.

when not subject to jurisdiction of Commission, § 57.

INQUIRIES,

Commission may institute, of its own motion, § 803.

INSPECTION,

punishment of carriers for failure to allow inspection of accounts or records, § 770.

INSTRUMENTALITIES FURNISHED BY OWNER,

See ALLOWANCES.

INSURANCE,

See MARINE INSURANCE.

[References are to sections and paragraphs.]

INTERCHANGE OF CARS,

See INTERCHANGE OF TRAFFIC.

INTERCHANGE OF TRAFFIC,

carriers must afford reasonable, proper, and equal facilities for, § 663.

continuous carriage of freights from place of shipment to place of destination, § 664.

purpose of statutes relating to interchange of traffic and continuous transportation, § 665.

use of tracks and terminal facilities of another carrier, § 666.

State statute requiring track connection, § 670.

discrimination in furnishing facilities for interchange of traffic, between connecting lines forbidden, § 669, ¶ A.

what constitutes an unlawful discrimination, § 669, ¶ B.

in exacting prepayment of charges by preceding carrier, § 669, ¶ C.

in granting wharfage facilities, § 669, ¶ D.

use of tracks and terminal facilities, § 669, ¶ E.

carriers must send cars through or transfer shipments enroute, § 170.

duty of carriers to exchange interchange and return cars, § 667.

INTERDIVISION TARIFFS,

defined, § 634, ¶ C, § 465, ¶ D.

form of, § 636, ¶ C.

size of, § 636, ¶ C.

INTERSTATE COMMERCE,

control of Congress over, § 28, ¶ A.

consists of what, § 28, ¶ A.

extent of, subject to regulation, § 28, ¶ B.

character of, determined by contract of shipment, § 28, ¶ C.

effect of temporary stoppage in State while in transit, § 28, ¶ D.

transportation beginning and ending in same State, but passing through another State, § 28, ¶ E.

transportation between places in United States and passing through foreign country, § 28, ¶ F.

State railroads engaged in, § 33.

jurisdiction of Commission over, § 28, ¶ B.

features of original act relating to, pp. 17-18.

INTERSTATE COMMERCE ACT,

facts anteceding passage of, pp. 1-17.

Hepburn Bill, effective date of, § 306, note 1.

status of contracts for special rates entered into before passage of, § 253.

[References are to sections and paragraphs.]

INTERSTATE COMMERCE ACT—*Continued.*

- jurisdiction of Commission to award reparation limited to violations of, § 407.
- evils of free transportation which were sought to be corrected by, § 590.

INTERSTATE COMMERCE COMMISSION.

- power of Congress to establish, § 1.
- genesis of, § 2.
- tariff regulations of, § 16, ¶ B.
- chairman of, § 4.
- secretary of, § 5.
- employés of, § 6.
- offices of, § 7.
- address of, § 8.
- supplies of, § 9.
- expenses of, § 10.
- sessions of,
 - general, § 11.
 - special, 11.
- special counsel of, § 12.
- special agents of, § 13.
- special examiners of, § 13.
- library of, § 19.
- departments of,
 - operating division, § 14, ¶ A.
 - division of rates and transportation, § 14, ¶ B.
 - bureau of statistics and accounts, § 14, ¶ C.
 - division of claims, § 14, ¶ D.
 - division of law, § 14, ¶ E.
 - division of prosecutions, § 14, F.
 - branch in charge of docket work, § 14, ¶ A.
 - safety appliance branch, § 14, ¶ A.
 - mailing branch, § 14, ¶ A.
 - branch in charge of accident reports, § 14, ¶ A.
 - stenographic and typewriting force, § 14, ¶ A.
 - division of accounts, § 14, ¶ C.
 - division of statistics, § 14, ¶ C.
 - board of examiners, § 14, ¶ C.
- Members of,
 - number, § 3, A.
 - qualifications, § 3, ¶ B.
 - how appointed, § 3, ¶ C.
 - term of office, § 3, ¶ D.

[References are to sections and paragraphs.]

INTERSTATE COMMERCE COMMISSION—*Continued.*

- their duties, § 3, ¶ E.
- salaries, § 3, ¶ F.
- vacancies, § 3, ¶ G.
- removal from office, § 3, ¶ H.
- original members, § 3, ¶ I.
- present members, § 3, ¶ J.
- agents of, special,
 - to inspect accounts, records and memoranda of carriers, § 13, ¶ A.
 - power to administer oaths, § 13, ¶ B.
 - power to examine witnesses, § 13, ¶ B.
 - power to receive evidence, § 13, ¶ B.
 - punishment for divulging information without authority, § 13, ¶ C.
- regulations of, tariff, § 16, ¶ B.
- examiners of, special,
 - to inspect accounts, records and memoranda of carriers, § 13, ¶ A.
 - power to administer oaths, § 13, ¶ B.
 - power to examine witnesses, § 13, ¶ B.
 - power to receive evidence, § 13, ¶ B.
 - punishment for divulging information without authority, § 13, ¶ C.
- powers of,
 - See JURISDICTION OF COMMISSION.
- duties of,
 - general statement concerning, § 3, ¶ E, § 24.
 - distribution of, § 14.
- quotations from correspondence of, § 23.
- official circulars, distribution of, § 22.
- official rulings, distribution of, § 22.
- rulings of,
 - distribution of official, § 22.
 - administrative, § 16, ¶ A.
- circulars of,
 - distribution of official, § 22.
- correspondence of,
 - quotations from, § 23.
 - with carriers on transportation matters, § 18.
- legal status of, § 25.
- origin of, § 2.
- publications of,
 - Annual Report to Congress, § 21.

[References are to sections and paragraphs.]

INTERSTATE COMMERCE COMMISSION—*Continued.*

Annual Report on Statistics of Railways in United States, § 21.

Preliminary Report on the Income of Railways in United States, § 21.

Railways in United States in 1902, § 21.

Tariff Circulars, § 21.

Conference Ruling Bulletin, § 21.

Administrative Rulings and Opinions, § 21.

Interstate Commerce Law, § 21.

orders of,

See ORDERS OF COMMISSION.

investigations of,

See INVESTIGATIONS OF COMMISSION.

requirements of,

See REQUIREMENTS OF COMMISSION.

decisions of,

See DECISIONS OF COMMISSION.

opinions of,

See OPINIONS OF COMMISSION.

nature of,

See NATURE OF COMMISSION.

jurisdiction of,

See JURISDICTION OF COMMISSION.

procedure and practices before,

See PROCEDURE BEFORE COMMISSION.

number of commissioners, § 3, ¶ A.

qualifications of commissioners, § 3, ¶ B.

appointment of commissioners, § 3, ¶ C.

term of office of commissioners, § 3, ¶ D.

duties of commissioners, § 3, ¶ E.

operating division, § 14, ¶ A.

vacancies in membership of, § 3, ¶ G.

facts anteceding creation of Commission, pp. 1-17.

removal of commissioners from office, § 3, ¶ H.

general sessions, § 11.

special sessions, § 11.

salaries,

of commissioners, § 3, ¶ F.

of secretary, § 5.

division of rates and transportation, § 14, ¶ B.

bureau of statistics and accounts, § 14, ¶ C.

division of claims, § 14, ¶ D.

division of law, § 14, ¶ E.

division of prosecutions, § 14, ¶ F.

[References are to sections and paragraphs.]

INTERSTATE COMMERCE COMMISSION—*Continued.*

- branch in charge of docket work, § 14, ¶ A.
- safety appliance branch, § 14, ¶ A.
- mailing branch, § 14, ¶ A.
- branch in charge of accident reports, § 14, ¶ A.
- stenographic force, § 14, ¶ A.
- typewriting force, § 14, ¶ A.
- division of accounts, § 14, ¶ C.
- division of statistics, § 14, ¶ C.
- board of examiners, § 14, ¶ C.
- original members of Commission, § 3, ¶ I.
- present members of Commission, § 3, ¶ J.
- Conference Ruling Bulletin, publication of, § 21.
- Interstate Commerce Law, publication of, § 21.
- Tariff Circulars, publication of,
 - railroad, § 21.
 - express companies, § 21.
- Administrative Rulings,
 - promulgation of, § 16, ¶ A.
 - publication of, § 21.
- Act to Regulate Commerce, publication of, § 21.
- reports,
 - annual report to Congress, §§ 20, 21.
 - of investigations, § 17.
 - of decisions, § 17.
 - of orders, § 17.
 - of requirements, § 17.
 - Annual Report on Statistics of Railways in United States, § 21.
 - Preliminary Report on the Income of Railways in United States, § 21.

INTERSTATE RAILROADS,

- defined, § 32, ¶ A.
- steam, § 32, ¶ B.
- electric, § 32, ¶ C.

INTRASTATE COMMERCE,

- excluded from Federal regulation and control, § 54, ¶ A.
- Commission no jurisdiction over State traffic, § 54, ¶ A.
- when a territory has been admitted into Union as a State, § 54, ¶ C.
- pooling contracts involving, not subject to Act, § 689, ¶ C.
- Commission no jurisdiction to award reparation on, § 405, ¶ H.

INTRATERRITORIAL COMMON CARRIERS,

- jurisdiction of Commission over, § 49.

[References are to sections and paragraphs.]

INTRATERRITORIAL TRANSPORTATION.

control of Congress over, § 29, ¶ A.

jurisdiction of Commission over, § 29, ¶ B.

application of Act to transportation between points within a territory, § 29, ¶ B.

INVESTIGATIONS,

by Commission,

reports of, § 17.

of complaints, § 790, ¶ D.

inquiries of its own motion, § 803.

INVESTMENT,

value of railroad investment as element in rate-making, § 89, ¶ J.

J

"JIM CROW" CARS.

discrimination between white and colored passengers, § 381.

JOINT AGENTS,

tariffs issued and filed by,

See PASSENGER TARIFFS OR FARE SCHEDULES; EXPRESS COMPANY
FREIGHT TARIFFS OR RATE SCHEDULES; FREIGHT TARIFFS OR
RATE SCHEDULES.

JOINT BASING TRANSFER TARIFFS,

of express companies, § 527.

JOINT FARES.

defined, § 550.

through tickets when no joint fares apply, § 553.

combination of joint fare to common point and local fare beyond,
combination of joint through and local fares, § 557, ¶ A.

fares must be those in effect over routes by which passenger
moves, § 557, ¶ B.

JOINT INTERCHANGEABLE FIVE-THOUSAND-MILE TICKETS,

See MILEAGE BOOKS AND TICKETS.

issuance of, § 564, ¶ A.

publication of, § 564, ¶ B.

sale of, § 564, ¶ C.

JOINT RATES,

defined, § 87, ¶ B.

power of Commission to establish joint through rates and divisions thereof, § 109, ¶ O.

[References are to sections and paragraphs.]

JOINT RATES—*Continued.*

jurisdiction of Commission over joint through rates from United States to adjacent foreign country, § 109, ¶ P.
 matter of agreement between carriers, § 97, ¶ A.
 combination of to common point and local rate beyond, § 97, ¶ G.
 to and from Porto Rican ports, § 97, ¶ H.
 carriers may not deny benefit of to manufacturers on connecting lines in order to foster industries on own lines, § 97, ¶ J.
 through rates which exceed combination of locals, § 93, ¶ J.
 through rate lower than combination of locals, § 93, ¶ K.
 reduction of joint rate to equal sum of locals,
 express company, § 519, ¶ H.
 joint rate greater than sum of locals,
 express company, § 519, ¶ I.
 responsibility of carrier's participating in, § 409, ¶ G.

JOINT TARIFFS.

See FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHEDULES.
 right of terminal railroads to participate in, § 337.
 defined, § 634, ¶ A, § 521, ¶ B, § 465, ¶ B.
 form of, § 636, ¶ A.
 size of, § 636, ¶ A.
 amendment of, on less than statutory notice,
 express company, § 519, ¶ G.
 must specify names of participating carrier,
 passenger, § 628, ¶ B.
 issued by joint agents, §§ 476, 543, 641.

JURISDICTION OF COMMISSION.

no power to prescribe form of bill of lading, § 125.
 power to inquire into business of carriers, § 801.
 power to keep itself informed regarding business of carriers, § 801.
 institution of inquiries of its own motion, § 803.
 required to execute and enforce provisions of Act to Regulate Commerce, § 802.
 general statement concerning, § 3, ¶ E, § 24.
 no common law jurisdiction, § 25.
 no power to enforce specific performance of contractual obligations, § 25.
 jurisdiction strictly statutory, § 24.
 cannot award damages for breach of contract, § 25.
 freight rates and charges,

REGULATION—82.

[References are to sections and paragraphs.]

JURISDICTION OF COMMISSION—*Continued.*

- duty of Commission in general in respect to rates, § 109, ¶ A.
- may determine and prescribe just and reasonable rates to be observed as maximum charges, § 109, ¶ B.
- may determine and prescribe just and reasonable regulations or practices, § 109, ¶ D.
- may order carriers to cease and desist from violation of statute, § 109, ¶ F.
- order of Commission to continue in force not exceeding two years, § 109, ¶ G.
- power of Commission to restrain enforcement of new rate pending investigation, § 109, ¶ Q.
- may not establish through rates in connection with street electric passenger railways, § 109, ¶ I.
- no authority to establish rates with independent water carriers, § 109, ¶ J.
- primary jurisdiction over reasonableness of rates, § 109, ¶ E.
- may upon its own initiative enter upon hearing concerning propriety of new rate, § 109, ¶ C.
- may establish joint rates applicable to through routes, § 109, ¶ H.
- no power to prescribe rates for future, § 109, ¶ K.
- no authority to establish general rate schedules, § 109, ¶ M.
- may make an order prescribing same rate for similar service to other shippers, § 109, ¶ N.
- power to establish joint through rates and divisions thereof, § 109, ¶ O.
- joint through rates from United States to adjacent foreign country, § 109, ¶ P.
- no authority to compel performance of contracts, § 251.
- over enforcement of Hours-of-Service Law, § 733.
- authorized to formulate regulations for safe transportation of explosives, § 451.
- power of Commission to reject schedules which do not give lawful notice of effective date, § 460, ¶ D.
- car supply and distribution.
 - distribution in general, § 172, ¶ A.
 - primary jurisdiction over regulations in distribution of cars, § 172, ¶ B.
 - no authority to order establishment of system of mine ratings, § 172, ¶ C.
 - no authority to compel carriers to furnish particular kind of cars, § 172, ¶ D.
 - no jurisdiction over delay in furnishing cars, § 172, ¶ E.
 - no jurisdiction over car shortage, § 172, ¶ F.

[References are to sections and paragraphs.]

JURISDICTION OF COMMISSION—*Continued.*

over unjust discrimination in distribution of cars, § 384, ¶ B.

unjust discriminations and undue preferences, § 384, ¶ A.

Commission without authority to compel shippers to pay undercharges, § 304, ¶ B.

Commission no authority to award set-off against a shipper in favor of a carrier for undercharges, § 304, ¶ C.

undercharges, § 304.

power of Commission to order switch connections,

provision of the statute, § 344, ¶ A.

Commission does not possess plenary discretion as to advisability of connection, § 344, ¶ B.

Commission no authority to order construction of private sidetrack, § 344, ¶ C.

allowances to the owner of property transported, § 329.

refrigeration and ventilation facilities and charges, § 212.

may prescribe proportion of joint rate where carriers fail to agree, § 672.

transit privileges,

no power to authorize privilege, § 236, ¶ A.

when reconsignment privilege is subject to, § 236, ¶ B.

when reconsignment charge not subject to, § 236, ¶ C.

compression of cotton, § 236, ¶ D.

passenger fares and tickets,

may determine and prescribe just and reasonable fares as maximum charges, § 586, ¶ A.

may prescribe just and reasonable regulations or practices, § 586, ¶ C.

may order carriers to cease and desist from violations of Act, § 586, ¶ D.

orders shall continue in force not exceeding two years unless suspended or set aside, § 586, ¶ E.

over mileage, excursion and commutation tickets, § 586, ¶ F.

power to restraint enforcement of new fare pending investigation, § 586, ¶ G.

Commission upon its own initiative may enter upon hearing concerning propriety of new fare, § 586, ¶ B.

Commission no authority to establish fares with independent water carriers, § 586, ¶ H.

terminal facilities, regulations and charges,

power to compel establishment and maintenance of station facilities, § 275, ¶ A.

jurisdiction over time of closing freight depots, § 275, ¶ B.

[References are to sections and paragraphs.]

JURISDICTION OF COMMISSION—*Continued.*

- no jurisdiction over delay in receipt, forwarding or delivery of traffic, § 275, ¶ C.
- no authority to prescribe certain time to be allowed consignee to designate point of delivery, § 275, ¶ D.
- rules governing loading and unloading of freight, § 275, ¶ E.
- exclusive jurisdiction over terminal facilities and charges relating to interstate transportation, § 275, ¶ F.
- classification of freight,
 - jurisdiction of Commission,
 - power to order changes in classification of commodities, § 82, ¶ A.
 - power of Commission to restrain enforcement of new classification pending investigation, § 82, ¶ F.
 - order of Commission to continue in force not exceeding two years, § 82, ¶ B.
 - Commission may upon own initiative enter upon hearing concerning propriety of new classification, § 82, ¶ C.
 - may not establish classification in connection with street electric passenger railways, § 82, ¶ D.
 - no authority to establish classification with independent water carriers, § 82, ¶ F.
- routes and routing,
 - establishment of through routes in general, § 181, ¶ A.
 - when Commission will refuse to exercise its authority to establish through routes, § 181, ¶ E.
 - may not establish through routes in connection with street electric passenger railways, § 181, ¶ B.
 - no authority to establish routes with independent water carriers, § 181, ¶ C.
 - may not require carriers to embrace less than entire length of road, § 181, ¶ D.
- exclusive over demurrage charges on interstate shipments, § 282.
- long-and-short-haul clause,
 - power of Commission to relieve carriers from operation of, § 113.
- damages and reparation,
 - in general, § 405, ¶ A.
 - loss of profit by tardy delivery, § 405, ¶ B.
 - loss of property in transit, § 405, ¶ B.
 - damage to property in transit, § 405, ¶ B.
 - damages accruing on shipments that moved under published tariff rates that were subsequently declared unreasonable, § 405, ¶ C.
 - reparation in case involving collection of higher rate than published in tariff, § 405, ¶ D.

[References are to sections and paragraphs.]

JURISDICTION OF COMMISSION—Continued.

- primary jurisdiction over unreasonableness of rates, § 405, ¶ E.
- reparation for misrouting traffic, § 405, § F.
- shrinkage of cattle in transit, § 405, ¶ G.
- intrastate traffic, § 405, ¶ H.
- trespass, § 405, ¶ I.
- overcharge due to error in weighing, § 405, ¶ J.
- damages resulting from discrimination in furnishing transportation facilities, § 405, ¶ K.
- set-off, § 405, ¶ L.
- abatement of jurisdiction when Territory is admitted as State, § 405, ¶ M.
- breach of contract, § 405, ¶ N.
- refund from published rate, § 405, ¶ O.
- damages due to carrier's failure to perform special service as agreed, § 405, ¶ P.
- reparation based on division of revenue between carriers, § 405, ¶ Q.
- unreasonable joint through rate from point in United States to point in adjacent foreign country, § 405, ¶ R.
- publication, posting and filing tariffs, § 459.
- reports of carriers,
 - annual,
 - may require, § 703, ¶ A.
 - form of, may prescribe, § 703, ¶ B.
 - monthly, may require, § 704, ¶ A.
 - special, may require, § 704, ¶ B.
 - periodical, may require, § 704, ¶ B.
 - accident,
 - may prescribe form of, § 708, ¶ D.
 - information, may require any desired, § 703, ¶ C.

L

LAND AGENTS,

- not entitled to free passes, § 615.

LAND COMPANY.

- purchase of tickets by, for prospective purchasers, § 587.

LAND EXPLORERS.

- not entitled to free passes, § 614.

LEAKAGE,

- allowance for loss by, to shippers of oil in tank cars, § 364, ¶ E.

[References are to sections and paragraphs.]

LEASE,

- carriers may lease cars from shippers, § 163, ¶ F.
- carriers may lease equipment from one party and refuse to lease from other parties, § 163, § G.
- of carrier's property in consideration of shipments, § 248.

LEGAL RATE,

- but one can exist between two points at any time, § 97, ¶ B.
- applicable to an interstate shipment is through rate in effect at the time the shipment is received by carrier, § 89, ¶ C.

LESS-THAN-CARLOAD QUANTITIES,

- lower rate for carload than for less-than-carload quantities, § 93, ¶ B.
- difference between carload and less-than-carload lots in fixing classification, § 67, ¶¶ H, I.
- minima weights for,
 - in general, § 140, ¶ A.
 - unreasonable to impose minimum weight greater than actual weight of L. C. L. shipment when loaded in car with other freight, § 140, ¶ B.
- classification of, § 67, ¶ I.
- rates on consolidated carloads of L. C. L. shipments, § 364, ¶ P.

LETTERS,

- to Commission, how addressed, § 8.

LIABILITY,

- See LIMITATION OF CARRIER'S LIABILITY.
- of initial carrier for loss beyond its own line, § 306.
- initial carrier has recourse upon responsible carrier, § 308.
- of carriers within territories for injuries to employes, § 741.
- of common carriers under Employers' Liability Act, § 739.
- receipt by Commission of tariffs does not relieve carriers for violations of Act, §§ 495, 648.

LIBRARY,

- of Commission, § 19.

LIEN,

- of carrier for transportation charges, § 301.
- carrier may refuse to deliver shipment until full tariff rate is paid or tendered, § 301, ¶ A.
- relinquishment of, by carrier upon indemnity, § 301, ¶ B.

LIMITATION OF ACTIONS,

- claims must be filed within two years, § 798, ¶ A.
- accrued claims at passage of Act, § 798, ¶ B.

[References are to sections and paragraphs.]

LIMITATION OF CARRIER'S LIABILITY.

initial carrier may not limit its liability for loss beyond own line,
§ 306.

initial carrier has recourse upon responsible carrier, § 308.

remedies existing at enactment of commerce law not barred, § 307.

constitutionality of statute relating to, § 309.

construction of statute fixing, § 310.

rates conditioned upon limited liability of carrier,

when valid, § 310.

when void, § 310.

responsibility of carrier under, § 409, ¶ H.

LIMITATION OF TIME.

in passenger tickets, § 571.

LIMITED TICKETS.

extensions of time allowed in case of,

illness, § 570, ¶ A.

to members of passenger's family, § 570, ¶ B.

quarantine, § 570, ¶ C.

washouts, § 570, ¶ D.

wrecks, § 570, ¶ D.

LIQUID NITROGLYCERIN,

regulations for transportation of, § 455.

LIQUOR,

refusal of express company to extend "C. O. D." service to ship-
ments of, § 377.

LIVE STOCK.

stoppage in transit, § 218.

Commission no jurisdiction to award damages for shrinkage while
in transit, § 405, ¶ G.

absorption of terminal charge on "dead" freight and assessment
of same on live stock, § 366, ¶ B.

facilities for handling at terminals,

duty of carrier to furnish, § 274, ¶ A.

location of live stock depot, § 274, ¶ B.

legality of charge for switching live stock to and from lines of
carrier and Union Stockyards in Chicago, § 274, ¶ C.

preference to, during period of embargo, § 354.

passes to caretakers of, § 601, ¶ A.

LOADING,

rules governing loading of freight for shippers, § 260.

rules for loading explosives, § 455.

rules governing must be shown in published tariff, § 461, ¶ P.

[References are to sections and paragraphs.]

LOCAL FARES.

- through fare higher than sum of, *prima facie* unreasonable, § 554.
- through interstate, higher than sum of local State fares, § 555.
- right of passenger to use two local State fares instead of published through rate on interstate journey, § 556.
- combination of joint fare to common point and local fare beyond, combination of joint through and local fares, § 557, ¶ A.
- fares must be those in effect over route by which passenger moves, § 557, ¶ B.

LOCAL RATES.

- defined, § 87, ¶ A.
- through rates which exceed combination of locals *prima facie* unreasonable, § 93, ¶ J.
- through rates lower than combination of locals, § 93, ¶ K.

LOCAL TARIFFS.

- defined, § 634, ¶ B, § 521, ¶ A.
- form of, § 636, ¶ B.
- size of, § 636, ¶ B.
- should have I. C. C. numbers and be posted and filed, §§ 653, 537, 503.
- defined, § 465, ¶ A.

LOCALITIES,

- discrimination between, in allowance of transit privileges, § 374, ¶ C.
- provision of statute prohibiting discrimination between, § 375, ¶ A.
- locality to benefit of its natural advantage, § 375, ¶ B.
- discrimination due to unfavorable location not unlawful, § 375, ¶ C.
- carriers may not foster local industries to prejudice of others, § 375, ¶ D.
- carriers may not create artificial market conditions, § 375, ¶ E.
- carriers may not favor a large town against a smaller one, § 375, ¶ F.
- discrimination between group points, § 375, ¶ G.
- competition not necessarily justification in establishing preferential rates, § 375, ¶ I.
- discrimination between localities in assessment of terminal charges, § 375, ¶ J.
- maintenance of free "pick-up" and delivery express service at one point and not at another, § 375, ¶ K.
- charging more for shorter than for longer distance over same line in same direction, the shorter being included within longer distance,

See LONG-AND-SHORT-HAUL CLAUSE.

[References are to sections and paragraphs.]

LONG-AND-SHORT-HAUL CLAUSE,

provisions of statute, § 111.

purpose of, § 112.

demurrage charges must not be included in higher charge, § 114.

rate must be considered as an entirety, § 115.

meaning of word "line," § 116.

rates reduced to meet water competition, which is subsequently eliminated, § 117.

provision in State statute not applicable to interstate traffic, § 118.

when rates to be changed under new law, § 119.

authority of Commission to relieve carriers from operation of, § 113.

damage accruing from violation of,

right of shipper to recover, § 411, ¶ A.

measure of damages, § 411, ¶ B.

LONG-HAUL TRAFFIC,

low rates for, § 93, ¶ Q.

LOOSE-LEAF TARIFFS,

See PASSENGER TARIFFS OR FARE SCHEDULES; EXPRESS COMPANY
FREIGHT TARIFFS OR RATE SCHEDULES; FREIGHT TARIFFS OR RATE
SCHEDULES.

LOSS OF BUSINESS,

Commission no jurisdiction to award damages account of, § 429, ¶ D.

LOSS OF EMPLOYMENT,

Commission no jurisdiction to award damages account of, § 429, ¶ B.

LOSS OF GOODS,

Commission no jurisdiction to award damages account of, § 405, ¶ B.

LOSS OF PRESTIGE,

Commission no jurisdiction to award damages account of, § 429, ¶ E.

LOSS OF PROFIT,

account tardy delivery, Commission no power to award damages,
§ 405, ¶ B.

LOW-GRADE TRAFFIC,

low rates for, § 93, ¶ P.

LOW RATES,

See FREIGHT RATES AND CHARGES.

LUMBER,

compared with shingles, § 89, ¶ R.

egg case material should not exceed rate on box lumber, § 89, ¶ R.

[References are to sections and paragraphs.]

M

MAGISTRATE,

fees of, for taking deposition, § 795, ¶ L.

MAIL,

See CORRESPONDENCE.

MAILING BRANCH,

under Commission, § 14, ¶ A.

MANUFACTURING IN TRANSIT.

See MILLING AND MANUFACTURING IN TRANSIT; TRANSIT PRIVILEGES.

MARINE INSURANCE,

provisions in bills of lading relating to, § 124.

MARINES,

may enjoy special rates, § 608.

MARKET COMPETITION.

See COMPETITION.

MARKING,

cars for transportation of explosives, § 455.

packages for transportation of explosives, § 455.

MASTER CAR BUILDERS' ASSOCIATION.

unreasonableness of regulation fixing a higher minimum loading requirement than the practice of carriers governed by M. C. B. rules will permit, § 138.

MAXIMA RATES AND FARES,

Commission may determine and prescribe just and reasonable rates and fares to be observed as, § 109, ¶ B, § 536, ¶ A.

maximum fares not specific fares,

fares and their application must be specifically stated, § 657, ¶ A.

fares to and from intermediate points, § 657, ¶ B.

specific joint through fare must be invariably applied, § 657, ¶ C.

maximum rates not specific rates,

rates and their application must be specifically stated, § 507, ¶ A.

rates to and from intermediate points, § 507, ¶ B.

specific joint through rates must be invariably applied, § 507,

¶ C.

MAXIMA WEIGHTS,

See WEIGHTS AND WEIGHING.

[References are to sections and paragraphs.]

MEALS,

passenger tickets including, § 577.

MEASURE OF DAMAGES,

overcharges, § 408, ¶ B.

assessment of unreasonable rate, § 409, ¶ A.

violation of long-and-short-haul clause, § 411, ¶ B.

unjust discrimination, § 426, ¶ C.

MEMBERS,

of Commission,

number, § 3, ¶ A.

qualifications, § 3, ¶ B.

how appointed, § 3, ¶ C.

term of office, § 3, ¶ D.

their duties, § 3, ¶ E.

salaries, § 3, ¶ F.

vacancies, § 3, ¶ G.

removal from office, § 3, ¶ H.

original members, § 3, ¶ I.

present members, § 3, ¶ J.

MEMORANDA,

See ACCOUNTS; RECORDS.

MERCURY,

regulations for transportation of, § 455.

MESSAGES,

sent from United States to any foreign country, § 31, ¶ F.

by telegraph companies, § 40.

by telephone companies, § 41.

by cable companies, § 42.

transmission of intrastate messages not subject to jurisdiction of Commission, § 54, ¶ A.

classification of telegraph, telephone and cable messages permissible, § 365.

State telegraph and telephone companies engaged in transmission of interstate messages, § 34.

MILEAGE,

as element in rate-making, § 89, ¶ H.

rules governing allowance of mileage to tank car owners must be shown in published tariffs, § 461, ¶ O.

[References are to sections and paragraphs.]

MILEAGE BOOKS AND TICKETS.

- against excursion or commutation tickets, § 379, ¶ K.
- nature of, § 562, ¶ A.
- legality of, § 562, ¶ B.
- issuance of, optional with carrier, § 562, ¶ C.
- conditions affecting use of mileage books, § 562, ¶ F.
- use of, in new territory, § 562, ¶ J.
- supplementing mileage books by paying regular local mileage rates,
§ 562, ¶ G.
- publication of, § 566, ¶ A.
- joint interchangeable five-thousand-mile,
 - issuance of, § 564, ¶ A.
 - publication of, § 564, ¶ B.
 - sale of, § 564, ¶ C.
- jurisdiction of Commission over, § 586, ¶ F.

MILITARY TRAFFIC.

- preference in expedition of in time of war, § 378.

MILK,

- passes to caretakers of, § 601, ¶ C.

MILLING AND MANUFACTURING IN TRANSIT,

See TRANSIT PRIVILEGES.

- nature of privilege, § 213, ¶ A.
- conducting business on open rates as distinguished from a transit
privilege, § 213, ¶ B.
- legality of privilege, § 215, ¶ A.
- charges for allowance of privilege,
 - right of carrier to demand compensation, § 216, ¶ A.
 - should be commensurate with service performed, § 216, ¶ B.
- allowance of privilege optional with carrier, § 219.
- shipper cannot demand privilege as a matter of right, § 219.
- rate to be applied on reshipped commodity, § 221.
- privilege not renewable after expiration of time allowed in tariff,
§ 223.
- substituting tonnage at transit point, § 224.
- transit privilege will not be given retroactive effect, § 225.
- milling of timber where road hauling raw material is controlled
by mill owner, § 226.
- jurisdiction of Commission over,
 - no power to authorize privilege, § 236, ¶ A.

MILLING TIMBER IN TRANSIT.

See TRANSIT PRIVILEGES.

- where the road hauling the raw material is owned or controlled
by the mill owner, § 226.

[References are to sections and paragraphs.]

MINE RATING,

See COAL MINES.

MINIMA WEIGHTS,

right of carriers to establish, § 132.

duty of carriers to furnish cars capable of carrying prescribed minima, § 133.

duty of carriers to establish minima consistent with loading capacity of cars, § 134.

unreasonable for carriers to make minimum weight vary with size of car furnished, § 135.

right of carrier to fix as minimum weight the marked capacity of the car, § 136.

unreasonableness of regulation fixing different minima weights for cars with and without refrigeration service, § 137.

unreasonableness of rule fixing a higher minimum loading requirement than the practice of carriers will permit, § 138.

for less-than-carload shipments,

in general, § 140, ¶ A.

unreasonable to impose a minimum weight greater than actual weight of L. C. L. shipment when loaded in car with other freight, § 140, ¶ B.

in connection with refrigeration service, § 157.

weight to apply on carload shipment in absence of published minimum, § 139.

MINIMUM CHARGE,

for transportation of less-than-carload shipments, § 93, ¶ C.

MINISTERS,

See CLERGYMEN.

discrimination between ministers of different denominations in granting reduced fares, § 379, ¶ E.

may receive free passes, §§ 594, 603, ¶ A.

families of, not entitled to free passes, § 603, ¶ B.

MINUTENESS,

in classification, § 68, ¶ B.

MISDEMEANORS,

See OFFENSES AND MISDEMEANORS.

MISQUOTATION OF RATES,

mistake by carrier's agent, § 244.

MISROUTING,

shipments that could have moved intrastate, § 199.

[References are to sections and paragraphs.]

MISROUTING—*Continued.*

involving carriers not subject to Act, § 200.

passengers, § 201.

liability of carriers for misrouting shipments,

jurisdiction of Commission, § 405, ¶ F.

where no specific instructions are given by shipper, § 424, ¶ A.

where carrier disregards shipper's instructions, § 424, ¶ B.

carrier responsible for misrouting only one to make reparation, § 424, ¶ C.

where initial carrier is responsible for, § 424, ¶ D.

via line that has no tariff on file, § 424, ¶ E.

where connecting carrier receives shipment without routing instructions, § 424, ¶ F.

refund of drayage charges caused by, § 424, ¶ G.

carriers reimbursing connecting lines for, § 424, ¶ H.

overcharge caused by error of carrier's agent, § 424, ¶ I.

MISTAKE,

by carrier's agent in quoting rate to shipper, § 244.

MIXED SHIPMENTS,

rates for, § 87, ¶ I.

publication of rates for, § 531.

MONEY,

only lawful payment for transportation, § 300.

MONEY POOLS,

defined, § 687, ¶ B.

MONOPOLIES,

See SHERMAN ANTI-TRUST LAW.

MONTHLY REPORTS,

of carrier to Commission,

punishment for failure to file, § 769, ¶ A.

Commission may require monthly reports, § 704, ¶ A.

monthly reports to be furnished in duplicate, § 704, ¶ C.

MOVEMENT OF TRAFFIC,

adjustment of rates to induce, § 89, ¶ O.

low rates to take care of empty car movements, § 89, ¶ P.

MUNICIPAL GOVERNMENTS,

free and reduced-rate transportation of property for, § 311, ¶¶ A, D.

caretakers of property transported for, § 601, ¶ G.

tariffs governing transportation for need not be published or filed, § 485.

[References are to sections and paragraphs.]

MUTILATION,

of records and accounts, punishment for, § 771.

N

NATIONAL ASSOCIATION OF RAILWAY COMMISSIONERS,
uniform rules for demurrage prescribed by, § 298.

NATURAL GAS,

transportation of, by pipe line, excepted from provisions of Interstate Commerce Act, § 45.

NATURE OF COMMISSION,

no legislative power, § 25.

disregards technical considerations in proceedings, § 25.

vested only with administrative, § 25.

not an "inferior court," § 25.

general referees of Circuit Courts, § 25.

special commissioners, § 25.

administrative and not judicial body, § 25.

expert tribunal, § 25.

deals with practical problems, § 25.

possesses quasi-judicial powers, § 25.

proceedings not legal controversies, § 25.

NAVY OFFICERS,

not entitled to free passes, § 609.

NET WEIGHTS,

billing shipments at, § 148.

NEW OFFICES,

express company rates to and from, § 519, ¶ J.

NEWSPAPER COMPANIES,

passes to caretakers of, § 601, ¶ D.

officers and employes of, not entitled to free transportation, § 610.

NITROCELLULOSE,

regulations for transportation of, § 455.

NITROGLYCERIN,

unlawful to transport liquid, § 449.

NONTRANSFERABLE PASSENGER TICKETS,

right of carrier to issue, § 582, ¶ A.

duty of carrier to cause nontransferable clause to be operative,
§ 582, ¶ B.

nontransferable limitation void unless shown in published schedule,
§ 582, ¶ C.

[References are to sections and paragraphs.]

NOTICE,

- in nature of demurrer.
 - rule as to, § 806, Rule V.
 - form of, § 806, No. 4.
- to take deposition, § 795, ¶ G.
- form of notice to take deposition, § 806, No. 6.
- delayed notice of arrival of fruit resulting in damages, § 428.

NOTICE OF PUBLICATIONS OF RATES AND FARES,

- See PASSENGER TARIFFS OR FARE SCHEDULES; EXPRESS COMPANY
- FREIGHT TARIFFS OR RATE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES.

NUMBER,

- of commissioners, § 3, ¶ A.

NURSES,

- attending persons injured in wrecks, entitled to free passes, § 594.

O**OATHS,**

- power of special agents or examiners to administer, § 13, ¶ B.
- power of commissioners to administer, § 786.

OCEAN CARRIERS,

- not subject to jurisdiction of Commission, § 57.
- only subject to jurisdiction of Commission in respect to traffic transported under common control, management, or arrangement with rail carriers, § 48.
- tariffs of, § 504, ¶ B.

OCEAN TRANSPORTATION,

- when subject to regulation of Commission, § 48.
- extent of traffic subject to Act to Regulate Commerce, § 48.
- when not subject to jurisdiction of Commission, § 57.

OFFENSES AND MISDEMEANORS,

- See PENALTIES AND FORFEITURES.
- rebates or concessions from published rate, § 758.
- departure from published tariff, § 766.
- failure to observe tariff, § 766.
- carrier corporation as well as officer or agent liable to conviction for violation of law, § 763.
- carriers violating Interstate Commerce Act, § 759.
- officers, agents or employés of carrier corporation liable for violation of Act, § 759.

[References are to sections and paragraphs.]

OFFENSES AND MISDEMEANORS—*Continued.*

- act of officer or agent deemed act of carrier, § 764.
- failure of carriers to fill reports,
 - annual and monthly reports, § 769, ¶ A.
 - accident reports, § 769, ¶ B.
- Government-aided railroads and telegraph lines, § 769, ¶ D.
- carrier issuing or giving free transportation in violation of law, § 756.
- failure to publish rates, § 766.
- Ash-Pan Act, violation of, § 766.
- Transportation-of-Explosives Act, violation of, § 781.
- Safety-Appliance Act, violation of, § 779.
- Hours-of-Service Law, violation of, § 778.
- pooling of freights, § 777.
- division of earnings, § 777.
- accident reports, failure to file, § 769, ¶ B.
- annual reports, failure to file, § 769, ¶ A.
- monthly reports, failure to file, § 769, ¶ A.
- Government-aided railroads and telegraph lines,
 - failure to comply with orders of Commission, § 751.
 - refusal to make reports to Commission, § 754, ¶ D.
- unjust discrimination and undue or unreasonable preference or advantage, § 758.
- failure to obey orders of Commission, § 776.
- person neglecting or refusing to attend and testify before Commission, § 773.
- disobedience to order of court, § 795.
- false classification,
 - by carrier, § 760.
 - by shipper, § 761.
- special examiner who divulges facts or information without authority, § 13, ¶ C, § 772.
- employé transferring pass unlawfully, § 757.
- false entry in accounts or records, § 771.
- mutilation of accounts or records, § 771.
- accounts kept by carriers other than those prescribed by Commission, § 770.
- failure of carriers to allow inspection of accounts or records, § 770.
- offering, granting, giving, soliciting, accepting or receiving any rebate from published rate, § 758.
- person using free transportation in violation of law, § 757.
- misdeemeanor for shipper to solicit, accept or receive any rebates, concession or discrimination, § 758.
- departure from published rate is essence of offense of rebating, § 392.

[References are to sections and paragraphs.]

OFFICE,

- of Commission,
 - authority to hire, § 7.
 - principal office, § 7.
 - present location, § 7.
- of commissioners,
 - term of, § 3, ¶ D.
 - removal from, § 3, ¶ H.

OFFICERS,

- liability of, for violations of law, §§ 758, 759.
- Act of, deemed act of carrier, § 764.
- of common carriers,
 - entitled to free passes, § 598, ¶ A.
 - families of, entitled to free passes, § 598, ¶ C.
 - household effects, may be transported free, § 598, ¶ D.
- of railroad receivers, entitled to free passes, § 598, ¶ E.

OFFICIAL CIRCULARS,

- of Commission, distribution of, § 22.

OFFICIAL CLASSIFICATION,

- extent of territory, § 66, ¶ B.

OFFICIAL RULINGS,

- of Commission, distribution of, § 22.

OFF-SET,

- See SET-OFF.

OIL,

- charging for weight of barrel without making corresponding charge when oil is shipped in tank cars not unjust discrimination, § 364, ¶ D.
- allowance for loss by leakage and evaporation to shippers of oil in tank cars, § 364, ¶ E.
- transportation of, by pipe line, subject to jurisdiction of Commission, § 45.

OMNIBUSES,

- not subject to Act to Regulate Commerce, § 58, ¶ B.
- transportation by, not subject to control of Commission, § 58, ¶ B.
- carriers must publish fares and offer tickets to public, independent of omnibus arrangements, § 588.
- officers and employes of, not entitled to free passes, § 616, ¶ C.

[References are to sections and paragraphs.]

OPERATING DIVISION,

under Commission,

its duties, § 14, ¶ A.

branches of, § 14, ¶ A.

OPERATING EXPENSES,

apportionment of total operating expenses between freight and passenger service not practicable, § 705.

OPINIONS OF COMMISSION,

on abstract questions, § 16, ¶ A.

on ex parte statements of fact, § 16, ¶ A.

not judicial, § 25.

publication of, § 21.

general interpretation of statute by Commission, § 16, ¶ A.

"ORDER" BILLS OF LADING,

form of, § 126.

ORDERS OF COMMISSION,

rule as to compliance with, § 796, Rule XVIII.

when effective, § 797, ¶ A.

service of, by mailing, § 797, ¶ C.

may be suspended or modified, § 797, ¶ D.

reversal or modification on rehearing, § 796, ¶ C.

carriers must comply with, § 797, ¶ E.

punishment for failure to obey, § 776.

general, § 16, ¶ A.

reports of, § 17.

Commission may order carriers to cease and desist from full extent of violation of law, § 109, ¶ F, ¶ 586, ¶ D.

to continue in force not exceeding two years unless suspended or set aside by Commission or court, § 82, ¶ B, § 109, ¶ G, § 586, ¶ E, § 797, ¶ B.

Commission may make order prescribing same rate for similar service to other shippers, § 109, ¶ N.

maintenance of relative adjustment to conform with,

right of carrier party to case or participant in joint tariff involved to adjust its rates to conform to order, § 651 ¶ A, § 498, ¶ A.

carrier not party to case nor participant in joint tariff must secure special permission, § 651, ¶ B.

permission for less than statutory notice and notation, § 651, ¶ C.

ORGANIZATION OF CARRIERS,

nature of organization immaterial to attaching of Commission's jurisdiction, § 53.

[References are to sections and paragraphs.]

ORIGIN,

of Commission, § 2.

OVERCHARGES,

See CLAIMS; DAMAGES AND REPARATION.

right of carrier to offset overcharge on one shipment against an undercharge on another, § 301, ¶ C.

account of excess weight due to error in weighing, § 405, ¶ J.
manner of accruing, § 408, ¶ A.

measure of damages, § 408, ¶ B.

right of shipper to recover, § 408, ¶ C.

refund of transfer charges, § 408, ¶ D.

refund on shipment to adjacent foreign country, § 416.

misrouting by carrier's agent, § 424, ¶ I.

assignability of claim, § 434.

account excess weight, § 410.

retention of, as unjust discrimination, § 368.

P

PACKAGES,

character of, as element in fixing classification, § 67, ¶ J.

kind used, § 71.

containing explosives must be marked, § 452.

concealing character of packages containing explosives, illegal, ¶ 453.

conditions of acceptance and shipment of, containing explosives,
§ 455.

false reporting contents of package a misdemeanor and penalty therefor, § 758.

PAPERS,

See DOCUMENTARY EVIDENCE.

PARTICIPATING CARRIERS,

See PASSENGER TARIFFS OR FARE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

PARTIES,

rule as to, § 806, Rule II.

appearance of, § 793.

entitled to reparation, § 439.

persons in interest may be made parties, § 794.

PARTY-RATE TICKETS,

discrimination between party classes in granting party rates illegal under similar circumstances and conditions, § 379, ¶ G.

[References are to sections and paragraphs.]

PARTY-RATE TICKETS—Continued.

where difference in charge to party classes was justified, § 379, ¶ H.
defined, § 563, ¶ A.
legality of, § 563.
United States not entitled to benefit of pleasure rates in transportation of its soldiers, § 563, ¶ C.
must be open to general public, § 563, ¶ D.
different fares to different societies unlawful, § 563, ¶ E.
regulations governing issuance and use of, § 563, ¶ F.
tariffs governing use of, § 658.

PASSENGER CARS,

duty of carriers to furnish in suitable condition for use, § 159, ¶ B.

PASSENGER FARES AND TICKETS.

See PASSENGER TARIFFS OR FARE SCHEDULES; FREE AND REDUCED-RATE PASSENGER TRANSPORTATION; TICKET BROKERAGE; DISCRIMINATIONS, PREFERENCES AND ADVANTAGES.

status of passenger fares before passage of act, pp. 1-17.

position of passenger not good grounds for discrimination, § 379, ¶ A.

exaction of additional sum for failure of passenger to produce ticket, § 379, ¶ B.

special rates on immigration traffic, § 379, ¶ D.

discrimination between ministers of different denominations, in granting reduced fare, § 379, ¶ E.

ticket brokerage as means of unjust discrimination and undue preference, § 380.

sale of cut-rate passenger tickets, results in violation of law, § 380, ¶ A.

actionable wrong committed by person carrying on ticket brokerage business, § 380, ¶ B.

power of Federal Court to restrain ticket scalpers, § 380, ¶ C.
"jim crow" cars, § 381.

party-rate tickets,

discrimination between party classes in granting party rates
illegal under similar circumstances and conditions, § 379, ¶ G.

where difference in charge to party classes was justified, § 379, ¶ H.

defined, § 563, ¶ A.

legality of, § 563, ¶ B.

United States Government not entitled to benefit of pleasure rates in transportation of its soldiers, § 563, ¶ C.

[References are to sections and paragraphs.]

PASSENGER FARES AND TICKETS—Continued.

- must be open to general public, § 563, ¶ D.
- different fares to different societies unlawful, § 563, ¶ E.
- regulations governing issuance and use of, § 563, ¶ F.
- excursion tickets,
 - issuance of on one occasion and refusal to issue on similar occasion, § 379, ¶ J.
 - against mileage tickets, § 379, ¶ K.
 - nature of, § 562, ¶ A.
 - legality of, § 562, ¶ B.
 - issuance of optional with carrier, § 563, ¶ C.
 - invalidated through failure of carrier to make connection, § 562, ¶ I.
 - jurisdiction of Commission, § 586, ¶ F.
- illness, extensions of time in case of, § 570, ¶ A.
- quarantine, extensions of time in case of, § 570, ¶ C.
- washouts, extensions of time in case of, § 570, ¶ D.
- wrecks, extensions of time in case of, § 570, ¶ D.
- refunds,
 - no refund to passenger who exceeds stopover privileges, § 572.
 - of unused portion of round-trip ticket, § 575.
- commutation tickets,
 - as against mileage tickets, § 379, ¶ K.
 - nature of, § 562, ¶ A.
 - legality of, § 562, ¶ B.
 - issuance of, optional with carrier, § 562, ¶ C.
 - regulations governing sale of, must not discriminate between classes of persons, § 562, ¶ D.
 - use of intrastate ticket in interstate journey, § 562, ¶ H.
 - jurisdiction of Commission over, § 586, ¶ F.
- stop-over privileges,
 - permissible under same conditions as justify extensions, § 570, ¶ E.
 - no refund to passenger who exceeds stop-over limit, § 572.
 - use of Pullman cars at stop-over points cannot be limited to members of particular club, § 573.
- mileage books and tickets,
 - against excursion or commutation tickets, § 379, ¶ K.
 - nature of, § 562, ¶ A.
 - legality of, § 562, ¶ B.
 - issuance of, optional with carrier, § 562, ¶ C.
 - conditions affecting use of mileage books, § 562, ¶ F.
 - use of, in new territory, § 562, ¶ J.
 - supplementing mileage books by paying regular local mileage rates, § 562, ¶ G.

[References are to sections and paragraphs.]

PASSENGER FARES AND TICKETS—*Continued.*

- jurisdiction of Commission over, § 586, ¶ F.
- hotel accommodations, tickets including, § 577.
- meals, tickets including, § 577.
- wrong line, ticket honored by, § 576.
- contribution made by carrier for entertainment, § 578.
- omnibus arrangements, carrier must issue fares, independent of, § 588.
- purchase of tickets, requirement that passenger shall, § 560.
- discrimination between white and colored passengers, § 381.
- joint fare, defined, § 550.
- must be just and reasonable, § 551.
- legality of higher fare between two points in one direction than in opposite direction, § 552.
- through tickets when no joint fares apply, § 553.
- through fare higher than sum of locals *prima facie* unreasonable, § 554.
- through interstate passenger fare higher than sum of local State fares, § 555.
- right of passenger to use two local State fares instead of published through rate on interstate journey, § 556.
- combination of joint fare to common point and local fare beyond, joint through and local fares, § 557.
- fares must be those in effect over routes by which passenger moves, § 557, ¶ B.
- Canadian rates, § 558.
- through passenger fares from points in United States to foreign countries, § 559.
- requirement that passenger shall purchase ticket, § 560.
- baggage of passengers, § 561.
- joint interchangeable five-thousand-mile tickets,
 - issuance of, § 564, ¶ A.
 - publication of, § 564, ¶ B.
 - sale of, § 563, ¶ C.
- round-trip tickets,
 - on certificate plan, § 565.
 - not unjustly discriminatory against higher one-way fare, § 379, ¶ C.
 - conditions relating to validation of, must be shown in tariff, § 568, ¶ A.
 - validating tickets in case of illness or death, § 568, ¶ B.
 - failure to validate, § 568, ¶ C.
 - refund of unused portion of, § 575.
- certificate plan, issuance of round-trip tickets on, § 565.

[References are to sections and paragraphs.]

PASSENGER FARES AND TICKETS—Continued.

- private cars, charges for moving, § 567.
- chartering trains, § 566.
- charges for moving private cars, § 567.
- failure to validate passenger tickets, § 569.
- limitation of time in passenger tickets, § 571.
- no refund to passenger who exceeds stop-over limit, § 572.
- stop-overs and extensions of time on limited tickets,
 - extensions may be allowed, in case of illness, § 570, ¶ A.
 - extension may include members of family traveling together, § 570, ¶ B.
 - extension in case of quarantine, § 570, ¶ C.
 - extension in case of washouts, wrecks, etc., § 570, ¶ D.
 - stop-over privileges, § 570, ¶ E.
 - provision for extension must be in tariffs, § 570, ¶ F.
- use of Pullman cars at stop-over points cannot be limited to members of particular club, § 573.
- redemption of unused passenger tickets, § 574.
- refund of unused portion of round-trip ticket, § 575.
- passenger ticket honored by wrong line, § 576.
- tickets for transportation and meals, hotel accommodations, etc., § 577.
- entertainment provided, or contribution made by a carrier, § 578.
- established fares must be observed, § 579.
- carrier may employ person to work up excursion travel, § 580.
- error of carrier's agent causing passenger to pay additional and unnecessary charges, § 581.
- publication of passenger fares,
 - See PASSENGER TARIFFS OR FARE SCHEDULES.
- published fares must not be deviated from, § 585.
- nontransferable limitation in passenger tickets void unless shown in published schedules, § 582, ¶ C.
- right of carrier to issue nontransferable passenger tickets, § 582, ¶ A.
- duty of carrier to cause the nontransferable clause to be operative and effective, § 582, ¶ B.
- nontransferable passenger tickets, § 582.
- tickets purchased at regular published fare may be given by a land company to prospective purchasers, § 587.
- carrier must publish fares and offer to public tickets independent of omnibus arrangements, § 588.
- sale of tickets after departure of last train on final selling date, § 589.
- jurisdiction of Commission over,

[References are to sections and paragraphs.]

PASSENGER FARES AND TICKETS—*Continued.*

may determine and prescribe just and reasonable fares to be observed as maximum, § 586, ¶ A.

may determine and prescribe just and reasonable regulations or practices, § 586, ¶ C.

may order carriers to cease and desist from full extent of violations found, § 586, ¶ D.

orders shall continue in force not exceeding two years unless suspended, § 586, ¶ E.

over mileage, excursion and commutation tickets, § 586, ¶ F.

restraint of enforcement of new fare pending investigation, § 586, ¶ G.

may upon own initiative enter upon hearing concerning propriety of new fare, § 586, ¶ B.

no authority to establish with independent water carriers, § 586, ¶ H.

validation of round-trip tickets,

conditions relating to, must be shown in tariffs, § 568, ¶ A.

in case of illness or death, § 568, ¶ B.

failure to validate, § 568, ¶ C.

PASSENGER TARIFFS OR FARE SCHEDULES.

conditions relating to validation of round-trip tickets must be shown in, § 568, ¶ A.

provisions for extensions of time on limited tickets must be shown in, § 570, ¶ F.

nontransferable limitation in passenger ticket void unless shown in published tariff, § 582, ¶ C.

publication of fares,

mandate of statute, § 628, ¶ A.

joint tariffs must specify names of participating carriers, § 628, ¶ B.

carriers prohibited from engaging in transportation unless they publish fares, § 633.

filing tariffs, supplements, concurrences, etc.,

mandate of statute, § 629, ¶ A.

concurrence of participating carriers, § 629, ¶ B.

filing by proper officer or designated agent, § 629, ¶ C.

two copies of all tariffs must be filed with Commission, § 629, ¶ D.

how tariffs filed with Commission must be addressed, § 629, ¶ E.
must be delivered to Commission within full statutory time, § 629, ¶ G.

disposition of tariffs received by Commission too late to give statutory notice, § 629, ¶ H.

[References are to sections and paragraphs.]

PASSENGER TARIFFS OR FARE SCHEDULES—*Continued.*

- must be delivered to Commission free from all claims for postage, § 629, ¶ F.
- carriers prohibited from engaging in transportation unless they file fares, § 633.
- posting of,
 - mandate of statute, § 630, ¶ A.
 - rules governing posting at stations, § 458.
- jurisdiction of Commission over publication,
 - posting and filing, § 459.
- notice required for publication of fares and changes therein,
 - statutory notice, § 632, ¶ A.
 - power of Commission to allow changes on less than statutory notice, § 632, ¶ B.
- carriers prohibited from engaging in transportation unless they file and publish fares, § 633.
- governing use of party-fare tickets, § 658.
- different kinds of tariffs defined,
 - joint, § 634, ¶ A.
 - local, § 634, ¶ B.
 - interdivision, § 634, ¶ C.
 - basing, § 634, ¶ D.
- must be printed, § 635.
- form and size of tariffs,
 - joint and basing, § 636, ¶ A.
 - local, § 636, ¶ B.
 - interdivision, § 636, ¶ C.
- title-page to contain what information,
 - name of carrier or agent, § 637, ¶ A.
 - I. C. C. number and cancellation, § 637, ¶ B.
 - kind of tariff, § 637, ¶ C.
 - territory, § 637, ¶ D.
 - dates, § 637, ¶ E.
 - expiration notice, § 637, ¶ F.
 - notice of supplements, § 637, ¶ G.
 - statutory notice or authority for shorter notice, § 637, ¶ H.
 - notation on excursion tariff, § 637, ¶ I.
 - officer issuing, § 637, ¶ J.
- side trips not specifically shown in through tariff, § 659.
- letter of transmittal accompanying tariffs filed with Commission, § 661.
- information that tariffs shall contain,
 - table of contents, § 638, ¶ A.
 - names of participating carriers, § 638, ¶ B.

[References are to sections and paragraphs.]

PASSENGER TARIFFS OR FARE SCHEDULES—*Continued.*

- concurrence forms and numbers, § 638, ¶ C.
- excursion tariffs must show or refer to, list of participating carriers, § 638, ¶ D.
- index of stations, § 638, ¶ E.
- geographical description of application of tariff, § 638, ¶ F.
- traffic territorial or group description of application of tariff, § 638, ¶ G.
- if points of origin and destination are arranged alphabetically, index of stations may be omitted, § 638, ¶ H.
- reference marks and abbreviations, § 638, ¶ I.
- routing, § 638, ¶ J.
- explanation of fares and rules, § 638, ¶ K.
- rules governing, § 638, ¶ L.
- no rule shall authorize substituting fare found in any other tariff, § 638, ¶ M.
- rules regarding stop-overs and baggage, § 638, ¶ N.
- rules and regulations filed and posted may be referred to in other schedules governed thereby, § 638, ¶ O.
- fares, § 638, ¶ P.
- fares in connection with stage routes, etc., § 638, ¶ Q.
- excursion fares, § 638, ¶ R.
- arrangements of points in tariffs local, § 638, ¶ S.
- interdivision, § 638, ¶ T.
- amendments and supplements,
 - defined, § 639, ¶ A.
 - form of, § 639, ¶ A.
 - participating carriers, § 639, ¶ B.
 - effective date of reissued items and I. C. C. references, § 639, ¶ C.
 - number in effect at one time, § 639, ¶ D.
 - supplement exceeding limited number subject to rejection, § 639, ¶ E.
 - no supplements under excursion-fare, commutation-fare or mileage tariffs, § 639, ¶ F.
 - loose-leaf tariffs, § 639, ¶ G.
 - periodical tariffs, § 639, ¶ H.
 - tariff that is filed and not yet effective, § 639, ¶ I.
 - withdrawal and adoption of tariffs when one carrier is absorbed by another carrier, § 639, ¶ J.
 - withdrawal and adoption when road or portion thereof is transferred to another company, § 639, ¶ K.
 - adoption of tariffs issued by other carriers or joint agents, § 639, ¶ L.
 - adoption notice filed by receiver, § 639, ¶ M.

[References are to sections and paragraphs.]

PASSENGER TARIFFS OR FARE SCHEDULES—*Continued.*

- concurrences and powers of attorney of old carrier must be replaced by those of new company, § 639, ¶ N.
- cancellation of tariffs and parts thereof,
 - tariff or supplement shall specify cancellation, § 640, ¶ A.
 - cancellation must be by authorized agent or by carrier that issued canceled tariff, § 640, ¶ B.
 - concurrence does not confer authority to cancel, § 640, ¶ C.
 - cancellation notice must be by supplement, § 640, ¶ D.
 - cancellation notice shall specify where fares will thereafter be found, § 640, ¶ E.
 - conflict in tariffs, § 640, ¶ F.
- agents authorized to issue and file,
 - notice of authorization and acceptance must be filed, § 641, ¶ A.
 - form of appointment, § 641, ¶ B.
 - cross exchange of concurrence avoided, § 641, ¶ C.
 - authority to agent may be revoked or transferred, § 641, ¶ D.
 - authorizations must be filed, § 641, ¶ E.
 - concurrences in tariffs of, must be filed, § 641, ¶ E.
 - joint agent will use his own I. C. C. serial number, § 641, ¶ F.
 - tariffs issued by carrier under concurrences will be filed by it for all concurring, § 641, ¶ G.
 - send copies of joint publications to every participating carrier, § 641, ¶ H.
 - carrier must not publish fares conflicting with or duplicating fares published by its agent, § 641, ¶ I.
- limiting use of terms "common points," "southeastern territory," etc., § 642.
- basing or proportional tariffs must be specific, § 643.
- numerical order of I. C. C. numbers of tariffs, or explanation of missing numbers, § 644.
- index of tariffs,
 - carriers must publish complete index of tariffs, § 645, ¶ A.
 - reissue and supplements, § 645, ¶ B.
 - notation on title-page, § 645, ¶ C.
 - date of issue, but not effective date, § 645, ¶ D.
- State fares used for interstate movements must be posted and filed, § 652.
- local tariffs should have I. C. C. numbers and be posted and filed, § 653.
- rates of Pullman Company, § 655.
- rail-and-water or all-water tariffs,
 - notation on title-page, § 646, ¶ A.
 - rule providing for restoration and suspension of fares, § 646, ¶ B.

[References are to sections and paragraphs.]

PASSENGER TARIFFS OR FARE SCHEDULES—*Continued.*

- routes other than Great Lakes may suspend or restore on one day's notice, § 646, ¶ C.
- supplement may contain, § 646, ¶ D.
- suspended tariffs may be reissued or amended, § 646, ¶ E.
- rejected schedules, § 647.
- receipt by and filing of tariffs with Commission does not relieve carriers from liability for violations of Act, § 648.
- fares prescribed in Commission's decisions must be promulgated in tariffs, § 649.
- circulars announcing compliance with orders of court, § 650.
- fares governing transportation for United States Government need not be published, § 654.
- maintenance of relative adjustment in issuing tariffs to conform with formal orders of Commission,
 - right of carrier party to case or participant in joint tariff involved to adjust its rates to conform to order, § 651, ¶ A.
 - carrier not party to case nor participant in joint tariff must secure special permission, § 651, ¶ B.
 - permission for less than statutory notice and notation, § 651, ¶ C.
- mileage, commutation, excursion and round-trip fares and tickets, in general, § 656, ¶ A.
 - round-trip excursion fares, § 656, ¶ B.
- maxima fares not specific fares,
 - fares and their application must be specifically stated, § 657, ¶ A.
 - fares to and from intermediate points, § 657, ¶ B.
 - specific joint through fare must be invariably applied, § 657, ¶ C.
- concurrence in tariffs issued or filed by another carrier or its agent,
 - mandate of statute, § 660, ¶ A.
 - concurrence better than power of attorney, § 660, ¶ B.
 - concurrence must be given to carriers named therein, § 660, ¶ C.
 - size of paper, § 660, ¶ D.
 - separate concurrences for passenger and freight tariffs, § 660, ¶ E.
 - forms of concurrence, § 660, ¶¶ F, G, H, I, J, K.
 - number of concurrences and authorizations, § 660, ¶ L.
 - revocation effective, § 660, ¶ M.
 - subsidiary or small-line tariffs, § 660, ¶ N.
 - conflicting authority to be avoided, § 660, ¶ O.
 - carrier issuing authority or concurrence not relieved from duty of posting, § 660, ¶ P.
 - consolidated concurrences, § 660, ¶ Q.
 - concurrence in tariffs of carriers in adjacent foreign countries, § 660, ¶ R.

[References are to sections and paragraphs.]

PASSENGER TARIFFS OR FARE SCHEDULES—Continued.

- movement of passengers to and from foreign countries,
 - fares governing inland haul, § 662, ¶ A.
 - through rates or fares may be shown, § 662, ¶ B.
 - steamship charges may be shown, § 662, ¶ C.
 - evidence of steamship passage in connection with inland fares, § 662, ¶ D.
 - statutory notice required, § 662, ¶ E.

PASSES,

- See FREE AND REDUCED-RATE PASSENGER TRANSPORTATION.

PAYMENT FOR TRANSPORTATION.

- See PREPAYMENT OF CHARGES.
- carrier demanding higher rate when freight shipped collect than when prepaid, § 93, ¶ I.
- provisions of the statute governing compensation for transportation, § 299.
- nothing but money can lawfully be given, § 300.
- money alone will satisfy, § 300.
- advertising in exchange for transportation, § 300, ¶ B.
- off-set of claim of shipper against freight charges, § 300, ¶ C.
- lien of carrier for transportation charge,
 - carrier may refuse to deliver shipment until full tariff rate is paid or tendered, § 301, ¶ A.
 - relinquishment of lien of carrier upon being indemnified against loss, § 301, ¶ B.
 - right of carrier to offset overcharge on one shipment against an undercharge on another, § 301, ¶ C.
- undercharges,
 - duty of delivering carrier to collect and of shipper to pay, § 303, ¶ A.
 - Commission without authority to compel shippers to pay, § 303, ¶ B.
 - Commission no authority to award set-off against a shipper in favor of a carrier for undercharges, § 303, ¶ C.
- repaying advancements made by shipper for construction of switch track, § 304.
- rates based on declared valuation, § 305.
- obligation of carrier to collect its tariff rate upon delivery of shipment, § 302.

PENALTIES AND FORFEITURES.

- right of carrier to charge, for excess loading of cars, § 150.

[References are to sections and paragraphs.]

PENALTIES AND FORFEITURES—Continued.

- carrier issuing or giving free transportation in violation of law, § 756.
- person using free transportation in violation of law, § 757.
- offering, granting, giving, soliciting, accepting or receiving any rebate from published rate, § 758.
- concessions or discriminations, § 758.
- departure from published tariff, § 758.
- rebates, § 758.
- officers, agents or employes of carrier corporation, § 759.
- carrier corporation, § 763.
- act of officer or agent deemed act of carrier, § 764.
- forfeiture in addition to prescribed penalty of three times amount of money and value of consideration illegally received, § 765.
- failure of carrier to publish rates, § 766.
- failure of carrier to observe tariffs, § 766.
- loading carriers beyond marked capacity, § 150.
- failure of carriers to file reports,
 - annual and monthly reports, § 769, ¶ A.
 - accident reports, § 769, ¶ B.
- Government-aided railroad and telegraph lines, § 754, ¶ D.
- Government-aided railroad and telegraph lines,
 - failure to comply with orders of Commission, § 751.
 - refusal to make reports to Commission, § 754, ¶ D.
- annual reports, failure to file, § 769, ¶ A.
- monthly reports, failure to file, § 769, ¶ A.
- accident reports, failure to file, § 769, ¶ B.
- Ash-Pan Act, violation of, § 780.
- Transportation-of-Explosives Act, violation of, § 781.
- Safety-Appliance Act, violation of, § 779.
- Hours-of-Service Law, violation of, § 778.
- pooling of freights, § 777.
- division of earnings, § 777.
- unjust discrimination and undue or unreasonable preference or advantage, § 758.
- failure to obey orders of Commission, § 776.
- person neglecting or refusing to attend and testify before Commission, § 773.
- disobedience to order of court, § 795.
- false classification,
 - by carrier, § 760.
 - by shipper, § 761.
- special examiner who divulges facts or information without authority, § 13, ¶ C, § 772.

[References are to sections and paragraphs.]

PENALTIES AND FORFEITURES—Continued.

- employé transferring pass unlawfully, § 757.
- false entry in accounts or records, § 771.
- mutilation of accounts or records, § 771.
- accounts kept by carriers other than those prescribed by Commission, § 770.
- failure of carriers to allow inspection of accounts or records, § 770.
- liability of shipper for soliciting, accepting or receiving any rebates, concession or discrimination, § 758.
- failure to keep accounts as prescribed by Commission, § 770.
- failure to comply with tariff regulations of Commission, § 767.
- inducing carriers to discriminate unjustly, § 762.
- false billing,
 - by carrier, § 760.
 - by shipper, § 761.
- false weighing,
 - by carrier, § 760.
 - by shipper, § 761.
- false representation by shipper whereby property is transported at less than regular rates, § 761.
- payment for damages, shipper obtaining by false representation, § 761.
- allowances, shipper obtaining by false representation, § 761.
- refund, shipper obtaining by false representation, § 761.
- refusal to quote rate to shipper, § 768.
- disclosing information concerning freight transported, by carrier, § 774.
- soliciting information concerning freight transported, § 775.

PENDENTE LITE,

See PURCHASERS PENDENTE LITE.

PER DIEM CHARGE,

See CAR PER DIEM CHARGE.

PERFORMANCE OF TRANSPORTATION SERVICE,

without rates on file with Commission, § 106.

PERISHABLE FREIGHT,

- higher rates than for carriage of ordinary freight, § 93, ¶ O, § 364, ¶ C.
- preference to, during embargo, § 354.
- duty of carriers to furnish refrigerator cars, § 158, ¶ B.
- passes to caretakers of, § 601.

[References are to sections and paragraphs.]

PESTILENCE,

free passes to provide relief from, § 594.

PHRASES,

See **TECHNICAL TERMS.**

PHYSICAL POOL,

defined, § 687, ¶ B.

PHYSICIANS,

of common carriers entitled to free passes, § 594.

families of, not entitled to free passes, § 598, ¶ C.

PICNIC EXCURSIONS,

See **EXCURSIONS.**

PIPE LINES,

pipe line defined, § 45, note 101.

subject to jurisdiction of Commission when engaged in handling
oil or other commodity in interstate commerce, § 45.

carriers of water, and natural and artificial gas excepted, § 45.

pooling contracts between pipe line and railroad not subject to
Act, § 689, ¶ B.

PLEADINGS,

must be printed, § 806, Rule XI.

forms of,

complaint against a single carrier, § 806, No. 1.

complaint against two or more carriers, § 806, No. 2.

answer, § 806, No. 3.

notice to carrier under Rule V, § 806, No. 4.

subpoena, § 806, No. 5.

notice of taking deposition under Rule XII, § 806, No. 6.

answer, rule as to, § 806, Rule IV.

demurrer, notice in form of, § 806, Rule V.

amendments, rule as to, § 806, Rule VII.

briefs, rule as to filing of, § 806, Rule XIV.

stipulations, rule as to, § 806, Rule IX.

copies of papers or testimony, rule as to, § 806, Rule XVII.

POOLS,

See **POOLING CONTRACTS.**

POOLING CONTRACTS,

pooling of freights and division of earnings forbidden, § 685.

nature and varieties of pools, § 687.

pool, defined, § 687, ¶ A.

REGULATION—84.

[References are to sections and paragraphs.]

POOLING CONTRACTS—*Continued.*

varieties of pools, § 687, ¶ B.

purpose of prohibition against pooling, § 688.

agreement for apportioning immigrant traffic, § 690.

pooling agreements not subject to Act,

between water carriers, § 689, ¶ A.

between pipe line and railroad, § 689, ¶ B.

intrastate traffic, § 689, ¶ C.

attitude of Congress at time of passage of law prohibiting pooling,
§ 691.

agreement for maintenance of rates not governed by Act, § 692.

establishment of through route by connecting carriers and reserv-
ing right to route, § 693.

money pool, defined, § 687, ¶ B.

physical pool, defined, § 687, ¶ B.

penalty for pooling of freights and division of earnings, § 777.

PORTO RICO,

joint through rates to and from, § 97, ¶ H.

POSTING OF TARIFFS AND CLASSIFICATIONS.

See FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR
FARE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE
SCHEDULES.

POSTOFFICE INSPECTORS,

free passes to, § 594.

POULTRY,

passes to caretakers of, § 601, ¶ A.

POWDER,

regulations for transportation of, § 455.

PRACTICE BEFORE COMMISSION.

See PROCEDURE BEFORE COMMISSION.

PRACTICES,

See RULES, REGULATIONS AND PRACTICES.

PREFERENCES,

See DISCRIMINATIONS, PREFERENCES AND ADVANTAGES; REBATES AND
CONCESSIONS; FREE AND REDUCED-RATE PASSENGER TRANSPORTA-
TION; FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY.

[References are to sections and paragraphs.]

PREPAYMENT OF CHARGES,

- carrier demanding higher rate when freight is shipped collect than when prepaid, § 93, ¶ I.
- discrimination in exacting prepayment of charges by preceding carrier, § 669, ¶ C.
- right of carrier to require prepayment from one consignee and to give credit to another, § 367, ¶ A.
- where carrier in order to injure and harass the consignee demands, § 367, ¶ B.

PRESUMPTIONS,

See EVIDENCE.

PRIMERS,

- regulation for transportation of, § 455.

PRINCIPAL AND AGENT,

See AGENTS.

PRIVATE CARRIERS,

- transportation by, not subject to jurisdiction of Commission, § 58.
- not subject to Interstate Commerce Act, § 58.

PRIVATE CAR COMPANIES,

See PRIVATE CARS.

- subject to Act to Regulate Commerce, § 46.

PRIVATE CARS,

- use of in freight traffic, § 162.
- transportation of cars owned by shippers, § 163, ¶ A.
- carrier not bound to transport a private car in an unsafe condition, § 163, ¶ C.
- carrier may refuse to handle, § 163, ¶ D.
- carriers may lease cars from shippers, § 163, ¶ F.
- carriers may lease equipment from one party and refuse to lease from other parties, § 163, ¶ G.
- carrier may haul cars of one car company and refuse to haul those of another, § 163, ¶ H.
- carriers may refuse to handle cars of express companies, § 163, ¶ I.
- responsibility of carriers for equipment secured from foreign sources, § 163, ¶ J.
- right of carrier to charge different rates for hauling different classes of private cars, § 163, ¶ K.
- exclusive use of private cars by owners thereof, § 163, ¶ L.
- right of shippers to use, § 164.
- distribution of during car shortage, § 165, ¶ H.
- allowances for use of, § 331.
- defined, § 289, ¶ A.

[References are to sections and paragraphs.]

PRIVATE CARS—*Continued.*

discrimination in hauling, § 370.

charges for moving, § 567.

demurrage on,

in general, § 289, ¶ A.

where cars detained on siding owned by carrier, § 289, ¶ B.

rules governing allowances for use of must be shown in published tariffs, § 461, ¶ O.

rates for hauling must be shown in published tariff, § 499.

PRIVATE SIDETRACK,

defined, §§ 350, 289, ¶ A.

Commission no authority to order construction of, § 344, ¶ C.

allowance for use of as medium of rebating, § 397.

PROCEDURE BEFORE COMMISSION.

complaints,

forms of,

complaint against a single carrier, § 796, No. 1.

complaint against two or more carriers, § 796, No. 2.

rule as to, § 806, Rule III.

division and nature of, § 782, ¶ A.

formal, § 782, ¶ B.

informal, § 782, ¶ C.

how and by whom made, § 790, ¶ A.

how served upon carriers, § 790, ¶ B.

reparation by carriers before investigation, § 790, ¶ C.

investigation of, by Commission, § 790, ¶ D.

before Commission or suit in courts, § 789.

forwarded by State railroad commissions, § 790, ¶ E.

Commission must make report of investigation, § 790, ¶ F.

reports of investigation must be entered of record, § 790, ¶ G.

service of copies of reports on parties, § 790, ¶ H.

complainant need not be directly damaged, § 790, ¶ I.

sessions of Commission,

rule as to public, § 806, Rule I.

general, § 783, ¶ A.

special, § 783, ¶ B.

form of procedure, Commission may prescribe, § 784.

seal, § 785.

oaths, § 786.

affirmations, § 786.

quorum of Commission, number constituting, § 788.

election of remedies.

[References are to sections and paragraphs.]

PROCEDURE BEFORE COMMISSION—*Continued.*

- complainant must elect between complaint to Commission and suit in courts, § 789.
- appearance of parties, § 793.
- parties,
 - rule as to, § 806, Rule II.
 - appearance of, § 793.
 - entitled to reparation, § 439.
 - persons in interest may be made parties, § 794.
- attendance and testimony of witnesses,
 - fees of witnesses, § 795, ¶ L.
 - power of Commission to require, § 795, ¶ A.
 - Commission may invoke aid of courts, § 795, ¶ B.
 - penalty for disobedience to order of court, § 795, ¶ C.
 - testimony by deposition,
 - may be taken by, § 795, ¶ D.
 - Commission may order, § 795, ¶ E.
 - before whom taken, § 795, ¶ F.
 - reasonable notice must be given, § 795, ¶ G.
 - compulsory attendance, § 795, ¶ H.
 - manner of taking, § 795, ¶ I.
 - when witness is in foreign country, § 795, ¶ J.
 - deposition must be filed with Commission, § 795, ¶ K.
 - fees of witnesses and magistrates, § 795, ¶ L.
 - claim that testimony will tend to criminate will not excuse witness, § 795, ¶ M.
 - immunity to testifying witnesses, § 795, ¶ N.
 - penalty for neglect or refusal to attend and testify, § 773.
 - rule as to summoning and attendance, § 806, Rule XII.
- rehearing,
 - Commission may grant, § 796, ¶ A.
 - application for rehearing not to operate as stay of proceedings, unless so ordered, § 796, ¶ B.
 - Commission may reverse, change, or modify orders on rehearing, § 796, ¶ C.
 - rule as to, § 806, Rule XV.
- orders of Commission,
 - rule as to compliance with, § 806, Rule XVIII.
 - when effective, § 797, ¶ A.
 - to continue in force not exceeding two years, § 797, ¶ B.
 - reversal or modification on rehearing, § 796, ¶ C.
 - service of, by mailing, § 797, ¶ C.
 - may be suspended or modified, § 797, ¶ D.
 - carriers must comply with, § 797, ¶ E.

[References are to sections and paragraphs.]

PROCEDURE BEFORE COMMISSION—*Continued.*

- punishment for failure to obey, § 797, ¶ F.
- docket,
 - formal complaints, § 799, ¶ A.
 - informal complaints, § 799, ¶ B.
- limitation of action before Commission,
 - claims must be filed within two years, § 798, ¶ A.
 - accrued claims at passage of Act, § 798, ¶ B.
- power of Commission to inquire into business of carriers, § 801.
- execution and enforcement of law, § 802.
- inquiries by Commission of its own motion, § 803.
- board of arbitration, Commission as, § 804.
- rules of practice before Commission,
 - public sessions, § 806, Rule I.
 - parties to cases, § 806, Rule II.
 - complaints, § 806, Rule III.
 - answers, § 806, Rule IV.
 - notice in nature of demurrer, § 806, Rule V.
 - service of papers, § 806, Rule VI.
 - amendments, § 806, Rule VII.
 - adjournments and extensions of time, § 806, Rule VIII.
 - stipulations, § 806, Rule IX.
 - hearings, § 806, Rule X.
 - depositions, § 806, Rule XI.
 - witnesses and subpoenas, § 806, Rule XII.
 - documentary evidence, § 806, Rule XIII.
 - briefs, § 806, Rule XIV.
 - rehearings, § 806, Rule XV.
 - printing of pleadings, etc., § 806, Rule XVI.
 - copies of papers or testimony, § 806, Rule XVII.
 - compliance with orders, § 806, Rule XVIII.
 - application of carriers under proviso clause of fourth section,
§ 806, Rule XIX.
 - information to parties, § 806, Rule XX.
 - address of Commission, § 806, Rule XXI.
- forms of pleadings,
 - complaint against a single carrier, § 806, No. 1.
 - complaint against two or more carriers, § 806, No. 2.
 - answer, § 806, No. 3.
 - notice in nature of demurrer, § 806, No. 4.
 - subpoena, § 806, No. 5.
 - notice of taking deposition, § 806, No. 6.
- preference given to hearings involving reasonableness of rates, § 792.
- documentary evidence, production of,

[References are to sections and paragraphs.]

PROCEDURE BEFORE COMMISSION—*Continued.*

- rule as to, § 806, Rule XIII.
- power of Commission to require, § 795, ¶ A.
- Commission may invoke aid of court, § 795, ¶ B.
- penalty for disobedience to order of court, § 795, ¶ C.
- claim that evidence will tend to criminate will not excuse, § 795, ¶ M.
- immunity to witnesses producing documentary evidence, § 795, ¶ N.
- penalty for neglect or refusal to produce, § 773.
- book, production of,
 - See DOCUMENTARY EVIDENCE, PRODUCTION OF.
- magistrate,
 - fees of, for taking depositions, § 795, ¶ L.
- answer,
 - rule as to, § 806, Rule IV.
 - form of, § 806, No. 3.
- subpoena,
 - authority of Commission to sign, § 787.
 - rule as to, § 806, Rule XII.
 - form of, § 806, No. 5.
- demurrer,
 - notice in nature of, § 806, Rule V.
 - form of, § 806, No. 4.
- witnesses,
 - See ATTENDANCE AND TESTIMONY OF WITNESSES.
- amendments,
 - rule as to, § 806, Rule VII.
- adjournments and extensions of time,
 - rule as to, § 806, Rule VIII.
- copies of papers or testimony,
 - rule as to, § 806, Rule XVII.
- information,
 - rule as to information to parties, § 806, Rule XX.
- address of Commission,
 - how complaints, pleadings, and other matter to be addressed, § 806, Rule XXI.
- stipulations,
 - rule as to, § 806, Rule IX.
- hearings,
 - rule as to, § 806, Rule X.
- depositions,
 - form of notice as to taking, § 806, No. 6.
 - rule as to, § 806, Rule XI.

[References are to sections and paragraphs.]

PROCEDURE BEFORE COMMISSION—*Continued.*

- testimony may be taken by, § 795, ¶ D.
- Commission may order, § 795, ¶ E.
- before whom taken, § 795, ¶ F.
- reasonable notice must be given, § 795, ¶ G.
- compulsory testimony by, § 795, ¶ H.
- manner of taking, § 795, ¶ I.
- when witness is in foreign country, § 795, ¶ J.
- must be filed with Commission, § 795, ¶ K.
- fees of witnesses and magistrates, § 795, ¶ L.
- papers, production of,
 - See DOCUMENTARY EVIDENCE, PRODUCTION OF.
- documents, production of,
 - See DOCUMENTARY EVIDENCE, PRODUCTION OF.
- agreements, production of,
 - See DOCUMENTARY EVIDENCE, PRODUCTION OF.
- tariffs, production of,
 - See DOCUMENTARY EVIDENCE, PRODUCTION OF.
- briefs,
 - rule as to filing of, § 806, Rule XIV.
- application by carriers under proviso clause of fourth section,
 - rule as to, § 806, Rule XIX.
- pleadings,
 - must be printed, § 806, Rule XI.
 - forms of,
 - complaint against a single carrier, § 806, No. 1.
 - complaint against two or more carriers, § 806, No. 2.
 - answer, § 806, No. 3.
 - notice in nature of demurrer, § 806, No. 4.
 - subpoena, § 806, No. 5.
 - notice of taking deposition, § 806, No. 6.
 - answer, rule as to, § 806, Rule IV.
 - demurrer, notice in nature of, § 806, Rule V.
 - amendments, rule as to, § 806, Rule VII.
 - briefs, rule as to filing of, § 806, Rule XIV.
 - stipulations, rule as to, § 806, Rule IX.
 - copies of papers or testimony, rule as to, § 806, Rule XVII.
- notice,
 - in nature of demurrer,
 - rule as to, § 806, Rule V.
 - form of, § 806, No. 4.
 - to take deposition, § 795, ¶ G.
- investigation,
 - of complaints, by Commission, § 790, ¶ D.

[References are to sections and paragraphs.]

PROCEDURE BEFORE COMMISSION—*Continued.*

- Commission may institute inquiries of its own motion, § 803.
- service of papers,
 - copies of reports on parties, § 790, ¶ H.
 - orders by mailing, § 797, ¶ C.
 - rules of Commission as to, § 806, Rule VI.
- reports,
 - service on parties, § 790, ¶ H.
 - as evidence, § 806, Rule XIII.
- fees of witnesses and magistrates in taking depositions, § 795, ¶ L.
- effect of amendment of June 18, 1910, upon powers of Commission over pending cases, § 805.
- may upon its own initiative enter upon hearing concerning propriety of new fare, charge, classification, or regulation, § 800.
- power of Commission to restrain enforcement of new rate, fare, charge, classification or regulation or practice, § 791.

PRODUCTION,

- cost of as element in classification, § 67, ¶ E.

PROFIT TO MANUFACTURER,

- carriers no right to adjust rates to preserve commercial profit to manufacturer, § 89, ¶ M.

PROJECTILES,

- regulations for transportation of, § 455.

PROPORTION,

- as element in rate-making, § 89, ¶ Q.

PROPORTIONAL RATES,

- defined, § 87, ¶ D.

PROPORTIONAL TARIFFS,

- must be specific, §§ 643, 480.
- defined, § 465, ¶ E.

PRORATING,

- See DIVISION OF RATE.

PROSECUTIONS,

- division of, under Commission,
 - investigates criminal violations of law, § 14, ¶ F.
 - prepares cases for presentation to United States prosecuting attorney, § 14, ¶ F.

PROSPERITY OF COUNTRY,

- right of railroad to share in, § 89, ¶ L.

[References are to sections and paragraphs.]

PROSPERITY OF SHIPPER,

not proper consideration in fixing classification, § 70.

carriers may not graduate their rates in proportion to, § 89, ¶ K.

PROTEST,

of shipper against payment of excessive charge not prerequisite to recovery of damages, § 412.

PUBLIC OFFICIALS,

not entitled to free passes, § 611.

PUBLICATIONS,

of Commission,

Annual Report to Congress, § 21.

Annual Report on Statistics of Railways in United States, § 21.

Preliminary Report on the Income of Railways in United States, § 21.

Railways in United States in 1902, § 21.

Tariff Circulars,

railroad companies, § 21.

express companies, § 21.

Conference Ruling Bulletin, § 21.

Administrative Rulings and Opinions, § 21.

Interstate Commerce Law, § 21.

PUBLICATIONS OF RATES AND FARES,

See FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHEDULES.

PULLMAN CARS,

use of at stop-over points cannot be limited to members of particular club, § 573.

PULLMAN COMPANY RATES,

publication of, § 655.

PUNISHMENT,

See PENALTY.

PURCHASERS PENDENTE LITE,

subject to jurisdiction of Commission, § 52.

reorganization of company does not deprive Commission of jurisdiction, § 52.

Q

QUALIFICATIONS,

of Commissioners, § 3, ¶ B.

[References are to sections and paragraphs.]

QUARANTINE,

extensions of time on limited tickets in case of § 570, ¶ A.

QUORUM,

number of commissioners constituting, § 788.

QUOTATIONS,

from correspondence of Commission, § 23.

QUOTATION OF RATES,

mistake by carrier's agent, § 244.

duty of carriers to quote rates to shipper, § 110.

penalty for refusal to quote to shipper, § 768.

R**RACKS,**

allowance for weight of on flat and gondola cars, § 330.

RAIL-AND-WATER TARIFFS,

See PASSENGER TARIFFS OR FARE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES.

RAILROADS,

See CARRIERS.

term "railroad" defined, § 26.

includes what, § 26.

interstate, defined, § 32, ¶ A.

steam, § 32, ¶ B.

electric, § 32, ¶ C.

kind of motive power immaterial, § 32, ¶ B.

State railroads,

jurisdiction of Commission over roads engaged in interstate commerce, § 33.

when not subject to jurisdiction of Commission, § 33.

common control, management, or arrangement for continuous carriage or shipment, § 33, ¶ B.

syllabi of important cases decided prior to June 29, 1906, affecting State railroads, § 33, ¶ C.

terminal or belt railroads,

jurisdiction of Commission over roads engaged in interstate commerce, § 41.

foreign railroads,

when subject to jurisdiction of Commission, § 42.

jurisdiction of Commission limited to the United States, § 62.

[References are to sections and paragraphs.]

RAILWAY-MAIL SERVICE EMPLOYES.

free passes to, § 604.

RATE-PER-TON-PER-MILE RULE.

in rate-making, § 93, ¶ BB.

RATES AND CHARGES.

See FREIGHT RATES AND CHARGES; FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER FARES AND TICKETS; PASSENGER TARIFFS OR FARE SCHEDULES; FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY; FREE AND REDUCED-RATE PASSENGER TRANSPORTATION; LONG-AND-SHORT-HAUL CLAUSE; CLASSIFICATION OF FREIGHT; CLASSIFICATIONS; DEMURRAGE OR "CAR-SERVICE;" EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

RATE SCHEDULES.

See FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHEDULES.

RATING OF MINES.

See COAL MINES.

REASONABLENESS OF RATES.

in general, § 93, ¶ A.

lower rate for carload than for less-than-carload quantities, § 93, ¶ B.

minimum charge for transportation of less-than-carload shipments, § 93, ¶ C.

any-quantities rates, § 93, ¶ D.

train-load rates, § 93, ¶ E.

higher rates when shipments are tendered with other than uniform bill of lading, § 93, ¶ F.

lower rate for longer than for shorter haul over same line, in same direction, the shorter being included within long distance,

See "LONG-AND-SHORT-HAUL CLAUSE."

released rates,

See "LIMITATION OF CARRIER'S LIABILITY."

higher rate when freight is shipped collect than when prepaid, § 93, ¶ I.

through rates which exceed combination of locals, § 93, ¶ J.

through rate lower than combination of locals, § 93, ¶ K.

higher rate over several carriers than over single line, § 93, ¶ L.

change in, which disturbs relative rates in large territory, § 93, ¶ M.

rates established by concert of action between carriers, § 93, ¶ N.

higher rates on perishable traffic, § 93, ¶ O.

[References are to sections and paragraphs.]

REASONABLENESS OF RATES—*Continued.*

- lower rates for low grade traffic, § 93, ¶ P.
- low rates for long-haul traffic, § 93, ¶ Q.
- carriers may charge higher rates to undeveloped territory, § 93, ¶ R.
- rates established to develop a particular industry, § 93, ¶ S.
- desire of carrier to keep certain traffic upon its line, § 93, ¶ T.
- tonnage shipped by particular firm, § 93, ¶ U.
- rates fixed according to usage of commodity, unlawful, § 93, ¶ V.
- equalizing rates of different carriers, § 93, ¶ W.
- lower rates for inland movement of import or export traffic than for domestic traffic,
 - See "IMPORT TRAFFIC."
- imported merchandise not entitled to inland proportional rate when transportation from port is purely local, § 93, ¶ Y.
- graduated rates, § 93, ¶ Z.
- group or blanket rates, § 93, ¶ AA.
- rate-per-ton-per-mile rule, § 93, ¶ BB.
- express rates, § 93, ¶ CC.
- filing schedule of rates with Commission raises no presumption of reasonableness, § 93, ¶ DD.
- enforcing rules and regulations not shown in published tariffs, § 93, ¶ EE.
- question of fact, § 92, ¶ A.
- presumption where long-established rate is advanced for short period and then reduced to former basis, § 409, ¶ D.
- absolute equality not attainable, § 93, ¶ BB.

REBATES AND CONCESSIONS,

- allowance of rebate does not vitiate bill of lading, § 122.
- unlawful to offer, grant, give, accept or receive any rebate from published rate or other concession or discrimination, § 389.
- meaning of term "rate" as used in rebate statute, § 390.
- method of rebating immaterial, § 391.
- departure from published rate as essence of offense, § 392.
- declaring a false valuation, false billing and false classification as violation of statute, § 393.
- allowances to terminal railroads as medium of rebating, § 394.
- allowances to "tap lines," § 395.
- allowances to shippers for services rendered or instrumentalities furnished must not exceed actual cost, § 396.
- allowance for use of private track of shipper as medium of rebating, § 397.
- cancellation of storage charges as medium of rebating, § 398.
- repayment by carrier on account of switch track, § 400.

[References are to sections and paragraphs.]

REBATES AND CONCESSIONS—Continued.

joint rebate not essential to the commission of offense, § 401.

relief of agent does not relieve carrier, § 402.

giving of commissions as a medium of rebating,

on import traffic, § 399, ¶ B.

refund or commission as a condition for sale of transportation,
§ 399, ¶ A.

division of commission between carrier's agent and shipper,
§ 399, ¶ C.

refund on account of full-fare transportation used by boy under
12 years of age not permissible, § 403.

offering, granting, giving, soliciting, accepting, or receiving any
rebate from published rates or other concessions declared a
misdemeanor and penalty therefor, § 404.

Sherman Anti-Trust Law cannot be resorted to, to sustain a pro-
ceeding to enjoin rebating, § 744.

RECEIPT,

See **BILLS OF LADING.**

RECEIPT OF PROPERTY.

allowances for, § 328.

shippers should adjust their business to meet necessary regula-
tions governing, § 259.

Commission no jurisdiction over delay in, § 275, ¶ C.

RECEIVERS OF COMMON CARRIERS.

jurisdiction of Commission over, § 51.

may be sued without permission of court, § 51.

not criminally liable for violation of joint tariff established prior
to receivership, § 51.

officers and employes of entitled to free transportation, § 598, ¶ D.

RECIPROCAL DEMURRAGE,

defined, § 296, ¶ A.

Commission no jurisdiction, § 296, ¶ B.

as remedy for car shortage, § 296, ¶ C.

RECOMMENDATIONS,

legalizing agreements for rate publication recommended, § 680.

RECONSIGNMENT,

See **TRANSIT PRIVILEGE.**

defined, § 214.

charges for allowances of privilege,

right of carrier to demand compensation, § 216, ¶ A.

should be commensurate with service performed, § 216, ¶ B.

[References are to sections and paragraphs.]

RECONSIGNMENT—*Continued.*

- reasonableness of charge, § 216, ¶ C.
- reconsignment rate higher than proportional rate, § 229.
- when charge not subject to Commission's jurisdiction, § 236, ¶ C.
- privilege will not be given retroactive effect, § 225.
- of part lots held in storage on shipper's order, § 227.
- reshipping rate from primary grain market, § 230.
- shipments refused by consignee, § 231, ¶ B.
- shipments damaged in transit, § 231, ¶ C.
- rules must be published and applied only via route over which shipment moved, § 231, ¶ D.
- rules not subject to cancellation at option of carrier, § 233.
- jurisdiction of Commission over,
 - when privilege subject to, § 236, ¶ B.
 - when charge not subject to, § 236, ¶ C.
- rules and regulations governing must be shown in published tariff, § 461, ¶ E.

RECORDS,

See REPORTS.

- jurisdiction of Commission over,
 - power to prescribe form of, § 695.
 - access of, § 696.
- access of Commission to, § 697.
- carriers may not keep other records than those prescribed by Commission, § 697.
- Commission may employ special examiners to inspect, § 698.
- destruction of,
 - when permissible, § 702, ¶ A.
- records touching issuance of passes, § 703, ¶ B, § 626.
- punishment for, § 771.
- punishment by forfeiture for,
 - failure to keep records as prescribed by Commission, § 770.
 - failure to allow inspection of, § 770.
 - mutilation or destruction of, § 771.
 - false entries in, § 771.
- keeping other records than those prescribed by Commission, § 771.

REDEMPTION,

- of unused passenger tickets, § 574.

REDUCED-RATE PASSENGER TRANSPORTATION,

See FREE AND REDUCED-RATE PASSENGER TRANSPORTATION.

REDUCED-RATE TRANSPORTATION OF PROPERTY,

See FREE AND REDUCED-RATE TRANSPORTATION OF PROPERTY.

[References are to sections and paragraphs.]

REFEREES,

powers of Commission are those of referees, § 25.

REFRIGERATION,

See VENTILATION; VENTILATOR CARS; REFRIGERATOR CARS.

minima weights in connection with,

different with and without refrigeration service, § 137.

should not exceed minima governing transportation charges,
§ 157.

duty of carrier to furnish facilities, § 203, ¶ A.

carrier may contract with car-line company to furnish facilities,
§ 204.

responsibility of carrier for facilities furnished, § 205.

sufficiency of the service, § 205, ¶ B.

charges for service,

must be just and reasonable, § 206.

reasonableness of, in general, § 207.

nature of commodity as affecting reasonableness of, § 207, ¶ B.

elements to be considered in fixing, § 208.

relation of to freight rate, § 209.

method of assessing, § 210.

jurisdiction of Commission over, § 212.

elements to be considered in fixing charges, § 208.

method of assessing charges, § 210.

jurisdiction of Commission over facilities and charges, § 212.

relation of charges for, to the freight rate, § 209.

nature of commodity as affecting reasonableness of charge, § 207,
¶ B.

REFRIGERATION CHARGES,

See REFRIGERATION; REFRIGERATOR CARS.

must be just and reasonable, § 206.

reasonableness of,

in general, § 207.

nature of commodity as affecting, § 207, ¶ B.

elements to be considered in fixing, § 208.

relation of, to the freight rate, § 209.

method of assessing, § 210.

jurisdiction of Commission over, § 212.

rules and regulations governing must be shown in published tariff,
§ 461, ¶ G.

REFRIGERATION PLANT,

free transportation of material for erection of refrigeration plant
owned by carrier, § 323.

[References are to sections and paragraphs.]

REFRIGERATOR CARS,

See REFRIGERATION; REFRIGERATION CHARGES.

duty of carriers to furnish, § 158, ¶ B.

sufficiency of, § 205, ¶ A.

demurrage charge of five dollars for detention of, held reasonable, § 284, ¶ C.

rules governing allowances for use of must be shown in published tariffs, § 461, ¶ O.

REFUNDS,

See REBATES AND CONCESSIONS.

on account of full fare transportation used by a boy under twelve years of age not permissible, § 403.

no refund to passenger who exceeds stop-over privileges, § 572.

of unused portion of round-trip passenger ticket, § 575.

of overcharge on shipment to adjacent foreign country, § 416.

where clerical error in tariff results in higher rate, § 417.

Commission no authority to authorize refund from tariff rate, § 405,

¶ O.

penalty for shipper obtaining refund by false representation, § 461.

REFUSED SHIPMENTS,

movement of shipments refused by consignees, § 318, ¶ B.

rules must be published and applied via route over which shipment moved, § 318, ¶ D.

REGULATIONS,

See RULES, REGULATIONS AND PRACTICES.

REHEARING,

Commission may grant, § 796, ¶ A.

application for rehearing not to operate as stay of proceedings, unless so ordered, § 796, ¶ B.

Commission may reverse, change, or modify orders on rehearing, § 796, ¶ C.

rule as to, § 806, Rule XV.

REJECTED SCHEDULES,

by Commission,

passenger, § 647.

express, § 539.

freight, § 494.

RELATION BETWEEN ARTICLES,

transported, in rate-making, § 89, ¶ R.

REGULATION—85.

[References are to sections and paragraphs.]

RELATION OF RATES,

See "COMPARISON OF RATES."

RELEASE,

of damages as consideration for issuance of free passes before passage of Act, § 250, ¶ A.

RELEASED RATES.

rates condition on limitation of carrier's liability,
when condition valid, § 310.
when condition void, § 310.
responsibility of carrier under, § 409, ¶ H.

RELIEF FROM OPERATION OF LONG-AND-SHORT-HAUL CLAUSE,

See LONG-AND-SHORT-HAUL CLAUSE.

RELIEF TRAINS.

hours-of-service law not applicable to crews of, § 732.

REMEDIES,

interstate commerce law did not bar remedies existing at its passage, § 307.
complainant must elect between complaint to Commission and suit in courts, § 789.
for wrongs which occurred prior to Act, § 445.

REMOTE DAMAGES.

See DAMAGES AND REPARATION.

REMOTE OR SPECULATIVE DAMAGES,

in general, § 429, ¶ A.
loss of employment, § 429, ¶ B.
loss of profit, § 429, ¶ C.
loss of business, § 429, ¶ D.
loss of prestige, § 429, ¶ E.
inability to harvest crops, § 429, ¶ F.

REMOVAL,

of commissioners from membership, § 3, ¶ H.

REMOVAL OF CAUSES ACT.

application of, to receivers of carriers, § 51.

REPARATION,

See DAMAGES AND REPARATION.

REPAYMENTS,

by carrier on account of switch track, § 400.

[References are to sections and paragraphs.]

REPORTS,

- of Commission,
 - annual reports to Congress, § 20.
 - investigations, § 17.
 - decisions, § 17.
 - orders, § 17.
 - requirements, § 17.
 - service on parties, § 790, ¶ H.
 - as evidence, § 806, Rule XIII.
- person who has severed his connection with railroad corporation,
 - not required to make reports, § 711.
- copies of annual reports of carriers to be preserved as public records in custody of secretary of Commission, § 713.
- reports of carriers under the Hours-of-Service Law, § 712.
- Government-aided railroads and telegraph lines,
 - duty to file annual reports, § 754, ¶ A.
 - special reports, § 754, ¶ B.
 - Commission authorized to prescribe system of reports, § 754, ¶ C.
 - penalty for refusal to make reports, § 754, ¶ D.
- annual reports of carriers to Commission,
 - copies of to be preserved as public records in custody of secretary of Commission, § 713.
 - Commission authorized to require, § 703, ¶ A.
 - Commission empowered to prescribe form of, § 703, ¶ B.
 - punishment for failure to file, § 769, ¶ A.
 - Commission may require any information desired, § 703, ¶ C.
 - what reports shall contain, § 703, ¶ D.
 - date for filing, § 703, ¶ E.
 - Commission may extend time for filing, § 703, ¶ F.
- monthly or special reports of carriers to Commission,
 - punishment for failure to file, § 769, ¶ A.
 - Commission may require monthly reports, § 704, ¶ A.
 - Commission may require special reports, § 704, ¶ B.
 - monthly reports to be furnished in duplicate, § 704, ¶ C.
- apportionment of total operating expenses between freight and passenger service not practicable, § 705.
- before whom acknowledgments to reports may be taken, § 706.
- State railroads engaged in interstate commerce required to file reports, § 709.
- State railroads engaged exclusively in intrastate commerce not required to file reports, § 710.
- certified copies of reports as prima facie evidence, § 714.
- accident reports,

[References are to sections and paragraphs.]

REPORTS—*Continued.*

- monthly reports of railway accidents, § 708, ¶ A.
- reports not to be used as evidence against carrier, § 708, ¶ C.
- Commission to prescribe form of, § 709, ¶ D.
- purpose of, § 708, ¶ E.
- in charge of operating division of Commission, § 14, ¶ A.
- common carriers required to file monthly reports, § 14, ¶ A.
- examined by Commission, § 14, ¶ A.
- statistics from compiled and published in monthly bulletin, § 14, ¶ A.
- punishment for failure to file, § 769, ¶ B.
- punishment for failure of carriers to file,
 - annual and monthly reports, § 769, ¶ A.
 - accident reports, § 769, ¶ B.
- Government-aided railroad and telegraph lines, § 754, ¶ D.
- periodical, Commission may require, § 704, ¶ B.

REQUIREMENTS OF COMMISSION,

- reports of, § 17.

RESHIPMENT,

- See TRANSIT PRIVILEGES.

RETROACTIVE EFFECT,

- transit privilege will not be given a, § 225.
- reparation will not be ordered where its effect is to make re-consigning privilege retroactive, § 419.
- tariffs cannot be given, § 299.

RETURN SHIPMENTS,

- reduced rates on, § 317.

REVENUE,

- methods of increasing, §§ 74, 91.
- railroads entitled to earn six percent on fair valuation of property, § 89, ¶ J.

REWEIGHING SHIPMENTS,

- in general, § 149, ¶ A.
- connecting weights on carload shipments of coal, § 149, ¶ B.

RISK,

- as element in rate-making, § 89, ¶ E.

ROUND-TRIP TICKETS,

- on certificate plan, issuance of, § 565.
- not unjustly discriminatory against higher one-way fare, § 379, ¶ C.

[References are to sections and paragraphs.]

ROUND-TRIP TICKETS—*Continued.*

- conditions relating to validation of, must be shown in tariff, § 568, ¶ A.
- validating tickets in case of illness or death, § 568, ¶ B.
- failure to validate, § 568, ¶ C.
- refund of unused portion of, § 575.
- passenger wrongfully deprived of benefit of return coupon of a round-trip excursion ticket may have reparation, § 430.
- publication of, § 656, ¶ B.

ROUTES AND ROUTING,

See MISROUTING.

- higher rate over route composed of two or more carriers than over single line, § 93, ¶ L.
- jurisdiction of Commission,
 - power of Commission to establish through routes, § 109, ¶ H, § 181.
 - when Commission will refuse to exercise its authority to establish through routes, § 181, E.
 - may not establish in connection with street electric passenger railways, § 181, ¶ B.
 - no authority to establish routes with independent water carriers, § 181, ¶ C.
 - may not require carrier to embrace less than entire length of road, § 181, ¶ D.
- through routes,
 - power of Commission to establish, § 109, ¶ H, § 181.
 - defined, § 177.
 - what determines existence of, § 178.
 - establishment of requires concurrence of carriers, § 179.
 - duty of carriers subject to Act to establish, § 180.
 - when Commission will refuse to exercise its authority to establish, § 181, ¶ E.
 - bond to indemnify carrier against loss in establishment of, § 182.
 - parties not competent in law to establish, § 185.
 - rules and regulations governing, duty of carrier to establish, § 180.
- tariff provisions governing, §§ 184, 461, ¶ U.
- factors to be considered in desirability of routes,
 - distance as a factor, § 186, ¶ B.
 - in general, § 186, ¶ A.
- routing instructions should be shown in bill of lading, § 187.
- mistake by carrier in responding to inquiry of shipper as to route, § 188.

[References are to sections and paragraphs.]

ROUTES AND ROUTING—Continued.

- shippers charged with notice of route over which published rate applies, § 189.
- right of shipper to specify particular routing and duty of carrier to observe such routing, § 190.
- duty of carrier when no specific routing instructions are given by shipper, § 191.
- effect of trackage arrangements under Act with respect to shipments routed by shipper, § 192.
- shippers may direct terminal routing or delivery, § 193.
- use of cars confined to a particular route, § 194.
- diversion of traffic enroute by carrier without consent of shipper, § 195.
- diversion of traffic by carriers to different route in case of necessity, freight, 196, ¶ A.
- passenger, § 196, ¶ B.
- compensation between carriers in case where traffic is diverted account blockade, § 196, ¶ C.
- where higher rate results in consequence of shipper's routing, § 197.
- misrouting,
 - shipments that could have moved intrastate, § 199.
 - involving carriers not subject to Act, § 200.
 - passengers, § 201.
- indemnifying carrier against loss in establishment of through route, § 182.
- distance as a factor in desirability of routes, § 186, ¶ B.
- bill of lading should contain routing instructions, § 187.
- duty of carrier to observe routing of shipper, § 190.
- compensation between carriers in case where traffic is diverted because of blockade, § 196, ¶ C.
- higher rate resulting in consequence of shipper's routing, § 197.
- what determines existence of through route, § 178.
- concurrence of carrier's necessary in establishment of through route, § 179.
- parties not competent in law to establish through routes for interstate transportation, § 185.
- terminal routing may be specified by shipper, § 193.
- delivery may be specified by shipper, § 193.
- cars confined to particular line, § 194.
- routes to be shown in published tariffs, § 638, ¶ J, § 525, ¶ N.
- rules and regulations governing,
 - duty of carriers to establish, § 180.

[References are to sections and paragraphs.]

RULES, REGULATIONS AND PRACTICES,

baggage, duty of carriers to establish, § 561, ¶ A.

terminals and terminal facilities,

duty of carriers to establish, § 256.

rules to insure safety of terminals, § 258.

transportation facilities, duty of carrier to establish, § 165, ¶ A.

loading and unloading of freight,

duty of carrier to establish, § 260.

jurisdiction of Commission, § 275, ¶ E.

must be shown in published tariffs, § 461, ¶ O.

through routes, duty of carrier to establish for operation of, § 180.

bills of lading, rules affecting, § 123.

rates,

generally,

duty of carrier to establish just and reasonable, § 94.

must be shown in published tariff, § 461.

explosives, transportation of, § 455.

cars,

different capacity furnished than ordered by shipper, § 153.

receipt and delivery of freight, § 259.

tariffs,

regulations of Commission, § 16, ¶ B.

penalty for failure to comply with regulations of Commission,
§ 767.

See FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR
FARE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE
SCHEDULES; DEMURRAGE OR "CAR-SERVICE;" TERMINAL FACILITIES
AND REGULATIONS.

enforcement of regulations not shown in published tariff unrea-
sonable, § 93, ¶ EE.

Commission may prescribe reasonable governing,

freight rates and charges, § 109, ¶ D.

passenger fares and tickets, § 586, ¶ C.

Commission may upon own initiative enter upon hearing concern-
ing propriety of new regulation, § 800.

power of Commission to restrain enforcement of,

pending investigation,

affecting passenger fares, § 586, ¶ G.

affecting freight rates and charges, § 109, ¶ Q.

affecting classification, § 82, ¶ F.

RULINGS OF COMMISSION,

administrative, § 16, ¶ A.

distribution of official, § 22.

[References are to sections and paragraphs.]

S

SAFETY APPLIANCE ACT,

enforcement of law by operating division of Commission, § 14, ¶ A.
penalty for violation, § 779.

SAFETY APPLIANCE BRANCH,

under Commission,
part of operating division, § 14, ¶ A.
examine equipment of railroads, § 14, ¶ A.
inspect safety appliances of railroads, § 14, ¶ A.
record of, § 14, ¶ A.

SALARIES,

commissioners, § 3, ¶ F.
secretary of Commission, § 5.

SCALE WEIGHTS,

actual scale weights conclusive and not weights marked on bill of
lading, § 146.

SCHEDULES,

See FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT
TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHED-
ULES.

SEAL,

of Commission, § 785.

SEASON OFFICES,

express company rates to and from, § 535.

SECRETARY,

of Commission,
appointment of, § 5.
salary of, § 5.
duties of, § 5.
first, § 5.
present, § 5.

SERVANTS,

traveling with family of railroad employé entitled to free trans-
portation, § 600.

SERVICE OF PAPERS,

copies of reports on parties, § 790, ¶ H.
orders by mailing, § 797, ¶ C.
rules of Commission as to, § 806, Rule VI.

[References are to sections and paragraphs.]

SERVICES RENDERED BY OWNER.

See ALLOWANCES.

SESSIONS,

of Commission,

general, § 11, ¶ A, § 783, ¶ A.

special, § 11, ¶ B, § 783, ¶ B.

rule as to public, § 806, Rule I.

SET-OFF,

offset of claim of shipper against freight charges, § 300, ¶ C.

right of carrier to offset overcharge on one shipment against an undercharge on another, § 301, ¶ C.

Commission no authority to award set-off against a shipper in favor of a carrier for undercharges, § 304, ¶ C, § 405, ¶ L.

SETTLERS,

not entitled to free passes, § 614.

SHERMAN ANTI-TRUST LAW.

Commission without authority to administer, § 742.

suits to enforce cognizable only by courts, § 743.

cannot be resorted to, to enjoin rebating, § 744.

traffic associations in violation of,

agreements for maintenance of rates, § 745, ¶ A.

agreements to prevent competition, § 745, ¶ B.

rates established by concert of action between carriers cognizable by courts, § 93, ¶ N.

SHINGLES,

compared with lumber, § 89, ¶ R.

SHIPPER,

not entitled to free passes, § 601.*

SHORTAGE OF CARS,

See CAR SHORTAGE.

SHORT HAUL,

See LONG-AND-SHORT-HAUL CLAUSE.

SHRINKAGE,

in weight of shipments while in transit,

not permissible in general, § 333.

of cattle, Commission no authority to award damages for, § 405,

¶ G.

[References are to sections and paragraphs.]

SIDETRACK,

private,

defined, § 350.

Commission no authority to order construction of, § 344, ¶ C.
connecting industries with carrier's rails, as constituting portion
of terminal facilities, § 351.

SIDE TRIPS,

not specifically shown in through tariff, § 659.

SLEEPING-CAR COMPANIES,

included within term "common carriers," § 36.

subject to jurisdiction of Commission, § 36.

were not subject to Act to Regulate Commerce prior to Hepburn
Amendment of 1906, § 36.

SMALL-ARM AMMUNITION,

regulations for transportation of, § 455.

SMOKELESS POWDER,

regulations for transportation of, § 455.

SOCIETIES,

different fares to different societies unlawful, § 563, ¶ E.

SOLDIERS,

United States Government not entitled to benefit of party rate in
the transportation of soldiers, which has been established for
pleasure and similar parties, § 563, ¶ C.

free passes for disabled volunteers, § 594.

Federal troops may enjoy special rates, § 608.

SOLDIERS' AND SAILORS' HOMES,

free passes to inmates of, § 594.

SOUTHERN CLASSIFICATION,

extent of territory, § 66, ¶ C.

SPECIAL AGENTS,

of Commission,

See AGENTS.

SPECIAL COUNSEL,

of Commission,

See COUNSEL.

SPECIAL EXAMINERS,

of Commission,

See EXAMINERS.

SPECIAL PRIVILEGES,

See DISCRIMINATIONS, PREFERENCES AND ADVANTAGES.

[References are to sections and paragraphs.]

SPECIAL REPORTS.

See REPORTS.

Commission may require, § 704, ¶ B.

SPECIAL SESSIONS.

of Commission, § 11, ¶ B.

SPECULATIVE DAMAGES.

See REMOTE OR SPECULATIVE DAMAGES.

SPURS,

connecting industries with carrier's rails, as constituting portion of terminal facilities, § 351.

STAGE-COACHES,

not subject to Act to Regulate Commerce, § 58, ¶ D.

transportation by, not subject to control of Commission, § 58, ¶ D.

officers and employes of, not entitled to free passes, § 616, ¶ C.

fares in connection with in published tariffs, § 638, ¶ Q.

STAKES,

allowance for weight of on flat and gondola cars, § 330.

STATE GOVERNMENTS,

free and reduced-rate transportation of property for, § 311.

caretakers of property transported for, § 601, ¶ G.

tariffs governing transportation for need not be published or filed, § 485.

STATE RAILROADS,

jurisdiction of Commission over roads engaged in interstate commerce, § 33.

when not subject to jurisdiction of Commission, § 56.

common control, management, or arrangement for continuous carriage or shipment, § 33, ¶ B.

syllabi of important cases decided prior to June 29, 1906, affecting State railroads, § 33, ¶ C.

engaged in interstate commerce required to file reports, § 709.

engaged exclusively in intrastate commerce not required to file reports, § 710.

STATE RAILROAD COMMISSIONS,

complaints sent by, to Interstate Commerce Commission, § 790, ¶ E.

STATE RATES.

used for interstate movements must be posted and filed, §§ 652, 536, 502.

rates established by State authority as standards in fixing interstate rates, § 95, ¶ G.

[References are to sections and paragraphs.]

STATE REGULATIONS,

of carrier's duty to furnish cars, § 173.

over interstate commerce before passage of Interstate Commerce Law, pp. 1-17.

State statutes relating to contracts between carriers and shippers, § 254.

State statute requiring track connection, § 254.

States no authority over terminal services and charges affecting interstate transportation, § 276.

long-and-short-haul provision of State statute not applicable to interstate traffic, § 118.

not applicable to demurrage charges on interstate shipments, § 282.

STATE TELEGRAPH COMPANIES,

engaged in transmission of interstate messages, § 34.

STATE TELEPHONE COMPANIES,

engaged in transmission of interstate messages, § 34.

STATIONS,

See FREIGHT DEPOTS.

power of Commission to compel establishment and maintenance of, § 275, ¶ A.

posting tariffs at,

passenger, § 630, ¶ A.

freight, § 458.

STATISTICS,

division of country into statistical groups, § 14, ¶ C.

division of, under Commission,

part of bureau of statistics and accounts, § 14, ¶ C.

has charge of reports of carriers, § 14, ¶ C.

compiles returns from reports of carriers, § 14, ¶ C.

STATUTES,

See INTERSTATE COMMERCE ACT; EMPLOYERS' LIABILITY ACT; SHERMAN ANTI-TRUST LAW; GOVERNMENT-AIDED RAILROAD AND TELEGRAPH COMPANIES; HEPBURN BILL; STATE REGULATIONS; REMOVAL OF CAUSES ACT.

STATUTORY NOTICE,

See PASSENGER TARIFFS OR FARE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES.

STEAM RAILROADS.

See RAILROADS.

[References are to sections and paragraphs.]

STEAMSHIP LINES,

officers and agents of lines not subject to Act, not entitled to free passes, § 616, ¶ B.

STENOGRAPHERS,

in employment of Commission, § 14, ¶ A.

STIPULATIONS,

rule as to, § 806, Rule IX.

STOP-OVER PRIVILEGES,

permissible as to passenger tickets under same conditions as justify extensions, § 570, ¶ E.

no refund to passenger who exceeds stop-over limit, § 572.

use of Pullman cars at stop-over points cannot be limited to members of particular club, § 573.

provisions for extension of, must be shown in tariffs, § 570, ¶ F, § 638, ¶ N.

STOPPING LIVE STOCK IN TRANSIT,

nature of privilege, § 218.

STORAGE,

of grain beyond period of elevation, § 237.

legality of storage privilege, § 215, ¶ C.

reconsignment on shipper's order of part lots held in storage, § 227.

free storage creating distributing point for private industry, § 228.

distribution of consignments of freight held in storage by carrier, § 262.

STORAGE CHARGES,

cancellation of, as medium of rebating, § 398.

defined, § 268, ¶ A.

purpose of assessing, § 268, ¶ B.

rules and regulations governing must be shown in published tariff, § 461, ¶ M.

"STRAIGHT" BILLS OF LADING,

form of, § 126.

STREET ELECTRIC RAILWAYS,

within District of Columbia, jurisdiction of Commission over, § 50.

Commission no power to establish in connection with,

through rates, § 109, ¶ I.

classification, § 82, ¶ D.

through routes, § 181, ¶ B.

[References are to sections and paragraphs.]

STRIKES,

demurrage charges resulting from, § 293.

SUBPOENA,

authority of Commission to sign, § 787.

rule as to, § 806, Rule XII.

form of, § 806, No. 5.

SUBSIDIARY CORPORATIONS,

officers and employés of not entitled to free transportation, § 605.

SUBSTITUTION,

substituting tonnage at transit point, § 224.

SUCCESSORS TO COMMON CARRIERS,

subject to jurisdiction of Commission, § 52.

SUMMER OFFICES,

express company rates to and from, § 535.

SUPPLEMENTS TO TARIFFS,

See PASSENGER TARIFFS OR FARE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES.

SUPPLIES,

of Commission,

authority to procure, § 9.

bought through Department of Interior, § 9.

some purchased by bids, § 9.

SURGEONS,

of common carriers, entitled to free passes, § 594.

families of, not entitled to free passes, § 598, ¶ C.

SWITCHES AND SWITCH CONNECTIONS,

See SWITCHING CHARGES.

repaying advancements made by shipper for construction, § 304.

duty of carriers to construct, maintain and operate switch connections, § 343.

power of Commission to order switch connections,

provision of the statute, § 344, ¶ A.

Commission does not possess plenary discretion as to advisability of connection, § 344, ¶ B.

Commission no authority to order construction of private sidetrack, § 344, ¶ C.

purpose of the statute requiring switch connection, § 345.

application for switch connection, § 346.

location of switch connection, § 347.

[References are to sections and paragraphs.]

SWITCHES AND SWITCH CONNECTIONS—*Continued.*

carrier no right to question use to be made of switch connection, § 348.

facts to be considered in establishing switch connection within limits of municipality, § 349.

private sidetrack,

defined, § 350.

Commission no authority to order construction of, § 344, ¶ C.

provision of statute ordering, § 344, ¶ A.

repayment by carrier on account of switch track as rebating, § 400.

where freight is unloaded by carrier's agent in depot by mistake instead of switching car to consignee's siding, § 432.

SWITCH TRACK.

See SWITCHES AND SWITCH CONNECTIONS.

SWITCHING CHARGES,

See SWITCHES AND SWITCH CONNECTIONS.

absorption of,

rules must be stated in published tariff, § 266, ¶ A.

where two small cars are furnished instead of car ordered by shipper, § 266, ¶ B.

not proper for consignee to pay switching charge and carrier to deduct same from rate, § 266, ¶ C.

discontinuance and subsequent resumption of practice as evidence of unreasonableness of charge, § 266, ¶ D.

accrued claims not invalidated by subsequent cancellation of absorption rule, § 427.

tariffs regulating switching charges between carriers,

joint rate between connecting carrier and switching road, § 491, ¶ A.

switching road must file all charges or regulations applied to interstate shipments, § 491, ¶ B.

where switching roads charges are added to rate, § 491, ¶ C.

where switching roads charges are absorbed by connecting carrier, § 491, ¶ D.

charges covering switching services mutually performed by connecting carriers, § 491, ¶ E.

SWITCHING COMPANIES,

engaged in local transportation, which is handled independently of interstate movement, not subject to control of Commission, § 61.

SYSTEM FUEL CARS,

distribution of, during car-shortage, § 165, ¶ H.

[References are to sections and paragraphs.]

T

TABLES OF RATES AND CHARGES.

See FREIGHT TARIFFS OR RATE SCHEDULES; CLASSIFICATIONS; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHEDULES.

TAILORS,

taking measurements of employés for uniforms may enjoy free passes, § 619.

TANK CARS,

rules governing allowances to owners of,
must be shown in published tariffs, § 461, ¶ O.
gauge books for, § 483.

"TAP LINES,"

allowances to,
illegal, § 339.
as medium of rebating, § 395.

TARIFFS,

See FREIGHT TARIFFS OR RATE SCHEDULES; PASSENGER TARIFFS OR FARE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

TARIFF REGULATIONS.

See PASSENGER TARIFFS OR FARE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.
of Commission, § 16, ¶ B.

TECHNICAL TERMS,

common control, management, or arrangement for continuous carriage or shipment, § 33, ¶ B.
carriers, § 26.
common carrier, § 26.
railroad, § 26.
transportation, § 26.
"just," § 92, ¶ B.
"reasonable," § 92, ¶ B.
used in classifications, § 76.
embargo, § 352.
elevation, § 237.
"floating" cotton, § 217.
reconsignment, § 214.

[References are to sections and paragraphs.]

TECHNICAL TERMS—Continued.

pools, § 687.

"twenty-four-hour period" in hours-of-service law, § 725.

employés,

in hours-of-service law, § 726.

"rate" in rebating statute, § 390.

unjust discrimination, § 358.

"like kind of traffic," § 361, ¶ A.

"under substantially similar circumstances and conditions," § 361, ¶ B.

"discrimination," § 361, ¶ C.

"like services," § 361, ¶ D.

"line," meaning of, in long-and-short-haul clause, § 116.

demurrage, § 277.

employés, § 594, ¶ A.

families, § 594, ¶ B.

"common points," §§ 642, 464, ¶ D.

"Southeastern territory," §§ 642, 464, ¶ D.

"Missouri River Points," § 528.

"general specials," § 528.

"per ton," § 464, ¶ C.

"net ton," § 464, ¶ C.

"long ton," § 464, ¶ C.

"ton of 2,240 lbs.," § 464, ¶ C.

"gross ton," § 464, ¶ C.

"grain products," § 464, ¶ D.

"forest products," § 464, ¶ D.

"cottonseed products," § 464, ¶ D.

"petroleum and its products," § 464, ¶ D.

TELEGRAMS,

See MESSAGES.

to Commission,

how addressed, § 8.

Secretary of Commission entitled to reimbursement for, § 10.

requirements of Comptroller of Treasury, § 10.

TELEGRAPH COMPANIES,

reports to Commission by companies having Government aid, § 754, ¶ A.

subject to jurisdiction of Commission, § 41.

exchange of free transportation with other common carriers, § 606.

contracts with other common carriers, for exchange of services, § 678.

passes or franks, § 326.

REGULATION—86.

[References are to sections and paragraphs.]

TELEGRAPH COMPANIES—*Continued.*

State telegraph companies engaged in transmission of interstate messages, § 34.

classification of messages permissible, § 365.

TELEGRAPH OPERATORS,

application of hours-of-service law to, § 724.

TELEPHONE COMPANIES,

subject to jurisdiction of Commission, § 42.

exchange of free transportation with other common carriers, § 606.

State telephone companies engaged in transmission of interstate messages, § 34.

classification of messages, permissible, § 365.

contracts with other common carriers for exchange of services, § 678.

passes or franks of, § 326.

TERM OF OFFICE,

of commissioners, § 3, ¶ D.

TERMINAL CHARGES,

See DEMURRAGE OR "CAR-SERVICE;" TERMINAL FACILITIES AND REGULATIONS; SWITCHING CHARGES.

transfer charges, § 267.

discrimination in assessing, § 366.

must be just and reasonable, § 270.

demurrage charges,

See DEMURRAGE OR "CAR-SERVICE."

car-service charges,

See DEMURRAGE OR "CAR-SERVICE."

legality of charge for switching live stock to and from lines of carrier and the Union Stock Yards in Chicago, § 274, ¶ C.

Commission exclusive jurisdiction over terminal charges relating to interstate transportation, § 275, ¶ F.

States no authority over terminal charges affecting interstate transportation, 276.

absorption of switching charges,

rules must be stated in published tariff, § 266, ¶ A.

where two smaller cars are furnished instead of car ordered by shipper, § 266.

not proper for consignee to pay switching charge and carrier to deduct such charge from rate, § 266, ¶ C.

discontinuance and subsequent resumption of practice of absorbing switching charge as evidence of unreasonableness of such charge, § 266, ¶ D.

[References are to sections and paragraphs.]

TERMINAL CHARGES—Continued.

- on "dead" freight and assessment of same on live stock, § 366.
- storage charges,
 - defined, § 268, ¶ A.
 - purpose of assessing, § 268, ¶ B.
- rules and regulations governing must be shown in published tariff, § 461, ¶ F.
- tariffs regulating charges between carriers,
 - joint rate between a connecting carrier and terminal road, § 491, ¶ A.
 - terminal road must file all charges or regulations applied to interstate shipments, § 491, ¶ B.
 - where the terminal roads charges are added to the rate, § 491, ¶ C.
 - where the terminal road charges are absorbed by connecting carrier, § 491, ¶ D.

TERMINAL FACILITIES AND REGULATIONS,

- See TERMINAL RAILROADS; SWITCHES AND SWITCH CONNECTIONS;
- TERMINAL CHARGES; DEMURRAGE OR "CAR-SERVICE,"
- shipper not entitled to allowance for plant facilities, § 341.
- use of terminal facilities of another carrier, § 666.
- discrimination in granting use of terminal facilities, § 669, ¶ E.
- discrimination in granting wharfage facilities, § 669, ¶ D.
- difference in facilities on different commodities, § 366, ¶ A.
- discrimination in, § 366.
- duty of carrier to furnish adequate terminal facilities, § 255.
- may vary with size and importance of city, § 257.
- rules to insure safety of terminal, § 258.
- shippers should adjust their business to meet necessary regulations governing receipt and delivery of freight, § 259.
- rules governing loading and unloading of freight for shippers, § 260.
- carrier not required to give use of its tracks to traffic of competing road, § 268.
- distribution of consignments held in storage by carrier, § 262.
- carrier not required to make free delivery to points located on line of another carrier, § 263.
- collection by carriers of less-than-carload shipments at point of origin, § 264.
- carrier not required to telegraph consignor when shipment is refused by consignee or latter cannot be found, § 272.
- live stock facilities,
 - duty of carriers to furnish proper facilities for handling live stock, § 274, ¶ A.

[References are to sections and paragraphs.]

TERMINAL FACILITIES AND REGULATIONS—*Continued.*

- location of live-stock depot, § 274, ¶ B.
- legality of charge for switching live stock to and from lines of carrier and Union Stock Yards in Chicago, § 274, ¶ C.
- States no authority over terminal services affecting interstate transportation, § 276.
- switch connections,
 - See SWITCHES AND SWITCH CONNECTIONS.
- publication of regulations affecting,
 - See FREIGHT TARIFFS OR RATE SCHEDULES.
- adequacy of, determined by size and importance of city, § 257.
- safety of terminals, rules to insure, § 258.
- jurisdiction of Commission over,
 - power to compel establishment and maintenance of station facilities, § 275, ¶ A.
 - time of closing freight depots, § 275, ¶ B.
 - no jurisdiction over delay in receipt, forwarding or delivery of traffic, § 275, ¶ C.
 - no authority to prescribe certain time to be allowed consignee to designate point of delivery, § 275, ¶ D.
 - rules governing loading and unloading of freight, § 275, ¶ E.
 - exclusive jurisdiction over terminal facilities relating to interstate transportation, § 275, ¶ F.
- loading of freight, rules governing, § 260.
- unloading of freight, rules governing, § 260.
- duty of carriers to establish reasonable regulations and practices governing, § 256.
- industrial sidetracks as constituting a portion of carriers' terminal facilities, § 351.

TERMINAL RAILROADS,

- subject to jurisdiction of Commission when engaged in handling interstate commerce, § 41.
- right of, to participate in joint tariff, § 337.
- right of, to enjoy division of through rate, § 337.
- sole ownership of road creates no presumption of illegality of allowance to, § 338.
- allowances to tap lines,
 - illegal, § 339.
 - as medium of rebating, § 395.
- allowance to, as medium of rebating, § 394.
- parties to joint tariffs, § 500.

TERMINAL ROUTING,

- shipper may direct, § 193.

[References are to sections and paragraphs.]

TERRITORY,

- regarded as a State, § 28, ¶ A.
- transportation within a territory.
 - control of Congress over, § 29, ¶ A.
 - jurisdiction of Commission over, § 29, ¶ B.
 - application of Act to, § 29, ¶ B.
- admission of, into Union as a State,
 - render local commerce subject to State laws, § 54, ¶ C.
- injuries to employes in, under Employers' Liability Act, § 741.
- abatement of jurisdiction of Commission when territory is admitted as State, § 405, ¶ M.

TESTIMONY OF WITNESSES,

See ATTENDANCE AND TESTIMONY OF WITNESSES.

"THROUGH" BILLS OF LADING,

- carriers required to issue, § 128.

THROUGH CARRIAGE,

See INTERCHANGE OF TRAFFIC.

THROUGH FARES,

- when no joint fares apply, § 553.
- higher than sum of locals prima facie unreasonable, § 554.
- higher than sum of local State fares, § 555.
- from points in United States to foreign countries, § 559.

THROUGH RATES,

- defined, § 87, ¶ C.
- which exceed combination of locals prima facie unreasonable, § 93, ¶ J.
- lower than combination of locals, § 93, ¶ K.
- but one legal rate can exist between two points at any time, § 97, ¶ B.
- legal rate applicable to an interstate shipment is through rate in effect at time shipment is received by carrier, § 97, ¶ C.
- carriers may specify basing points or factors for constructing combination rate, § 97, ¶ D.
- rate to apply where no specific method of constructing through rate is provided for, § 97, ¶ E.
- right of shipper to consign freight to given point and reship, § 97, ¶ F.
- joint through rates to and from Porto Rican ports, § 97, ¶ H.
- power of Commission to establish joint through rates and divisions thereof, § 109, ¶ O.

[References are to sections and paragraphs.]

THROUGH RATES—*Continued.*

jurisdiction of Commission over joint through rates from United States to adjacent foreign country, § 109, ¶ P.
right of terminal railroad to enjoy division of, § 337.
rates not on file with Commission not lawful factors in constructing through charges, § 97, ¶ I.

THROUGH ROUTES,

See INTERCHANGE OF TRAFFIC.

power of Commission to establish,

in general, § 181, ¶ A.

may not establish in connection with street electric passenger railways, § 181, ¶ B.

no authority to establish with independent water carriers, § 181, ¶ C.

may not require carrier to embrace less than entire length of road, § 181, ¶ D.

defined, § 177.

what determines existence of, § 178.

establishment of, requires concurrence of carriers, § 179.

duty of carriers subject to Act to establish, § 180.

establishment of, for purpose of awarding reparation, § 414.

rules and regulations governing, duty of carrier to establish, § 180.

THROUGH TICKETS.

See "PASSENGER FARES AND TICKETS."

TICKETS,

See PASSENGER FARES AND TICKETS; PASSENGER TARIFFS OR FARE SCHEDULES; TICKET BROKERAGE; FREE AND REDUCED-RATE PASSENGER TRANSPORTATION.

TICKET BROKERAGE,

as means of unjust discrimination and undue preference, § 380.

sale of cut-rate passenger tickets results in violation of law, § 380, ¶ A.

actionable wrong committed by person carrying on business of, § 380, ¶ B.

power of Federal Court to issue injunction restraining ticket scalpers from dealing in cut-rate tickets in future, § 380.

TICKET "SCALPERS,"

See TICKET BROKERAGE.

TIME,

See EXTENSION OF TIME.

[References are to sections and paragraphs.]

TONNAGE,

shipped by a particular firm, bearing on reasonableness of rates,
§ 93, ¶ U.

"TO ORDER" BILLS OF LADING,

form of, § 126.

TRACKAGE ARRANGEMENTS,

effect of trackage arrangements under Act to Regulate Commerce
with respect to shipments routed by shipper, § 192.

TRACKS,

See SWITCHES AND SWITCH CONNECTIONS.

use of tracks of another carrier, § 666.

discrimination in furnishing use of tracks, § 669, ¶ E.

private sidetrack,

defined, §§ 350, 289, ¶ A.

Commission no authority to order construction of, § 344, ¶ C.

allowance for use of as medium of rebating, § 397.

carrier not required to give the use of its tracks to traffic of competing road, § 261.

repayment by carrier on account of switch tracks as rebating, § 400.

TRAFFIC ASSOCIATIONS,

in violation of Sherman Anti-Trust Law,

agreements for maintenance of rates, § 745, ¶ A.

agreements to prevent competition, § 745, ¶ B.

liability of members for unreasonable rate charged, § 438.

TRAINS,

chartering trains for use of passengers, § 566.

TRAIN-LOAD RATES,

unreasonable, § 93, ¶ E.

lower rate for trainloads than for carloads unreasonable, § 364, ¶ B.

TRANSFER CHARGES,

generally, § 267.

rules and regulations governing must be shown in published tariff,
§ 461, ¶ N.

TRANSFER COMPANIES,

not subject to Act to Regulate Commerce, § 58, ¶ B.

transportation by, not subject to control of Commission, § 58, ¶ B.

officers and employes of, not entitled to free transportation, § 616,
¶ C.

[References are to sections and paragraphs.]

TRANSFER IN TRANSIT,

See TRANSIT PRIVILEGES.

legality of privilege, § 215, ¶ C.

TRANSFER WAGONS,

See TRANSFER COMPANIES.

TRANSIT PRIVILEGES,

"floating" cotton, § 217.

stopping stock in transit, § 218.

allowance of privilege optional with carrier, § 219.

shipper cannot demand, as a matter of right, § 220.

rate to be applied on reshipped commodity, § 221.

not demandable as matter of right, § 220.

substituting tonnage at transit point, § 224.

shipment that moved in, under a former tariff, does not lose benefit
of transit privilege canceled pending the out movement, § 222.

privilege not availed of cannot be renewed after expiration of time
allowed in tariffs, § 223.

not given retroactive effect, § 235.

milling timber where road hauling raw material is owned by mill
owner, § 226.

no renewal after expiration of time specified, § 223.

reshipping rate from primary grain market, § 230.

rules and regulations governing must be shown in published tariff,
§ 461, ¶ J.

reconsignment,

defined, § 214.

of part lots held in storage at shipper's order, § 227.

rate higher than proportional rate, § 229.

of shipment refused by consignee or damaged in transit,

in general, ¶ 231, ¶ A.

shipments refused by consignee, § 231, ¶ B.

shipments damaged in transit, § 231, ¶ C.

rules must be published and applied via route over which
shipment moved, § 231, ¶ D.

rules not subject to cancellation at option of carrier, § 233.

reasonableness of charge for, § 216, ¶ C.

milling and manufacturing in transit,

nature of privilege, § 213, ¶ A.

conducting business under open rates as distinguished from a
transit privilege, § 213, ¶ B.

legality of, § 215, ¶ A.

compression of cotton in transit,

legality of, § 215, ¶ B.

[References are to sections and paragraphs.]

TRANSIT PRIVILEGES—Continued.

- "floating" cotton, § 217.
- jurisdiction of Commission over, § 236, ¶ D.
- legality of transit privileges,
 - milling and manufacturing in transit, § 215, ¶ A.
 - compression of cotton in transit, § 215, ¶ B.
 - elevation, transfer in transit and storage, § 215, ¶ C.
- charges for allowance of,
 - right of carrier to demand compensation, § 216, ¶ A.
 - should be commensurate with the service performed, § 216, ¶ B.
 - reasonableness of reconsignment charge, § 216, ¶ C.
- carriers must not discriminate in allowing, § 374, ¶ A.
- special privileges which can only be enjoyed by certain shippers,
 - unlawful, § 373.
- jurisdiction of Commission over,
 - no power to authorize privilege, § 236, ¶ A.
 - when reconsignment privilege subject to, § 236, ¶ B.
 - when reconsignment charge not subject to, § 236, ¶ C.
 - compression of cotton, § 236, ¶ D.
- storage,
 - in transit, legality of, § 216, ¶ C.
 - creating distributing point for private industry, § 228.
- transfer in transit,
 - legality of, § 216, ¶ C.
- contract with shipper for allowance of, § 415.
- discrimination between manufactured products, § 374, ¶ B.
- discrimination between localities, § 374, ¶ C.

TRANSMISSION OF MESSAGES,

- from United States to any foreign country, § 31, ¶ F.
- by telegraph companies, § 40.
- by telephone companies, § 41.
- by cable companies, § 42.
- of intrastate messages not subject to jurisdiction of Commission, § 54, ¶ A.
- classification of telegraph, telephone and cable messages permissible, § 365.

TRANSPORTATION,

- defined, § 26.
- provisions in Act enumerating what transportation subject thereto, § 26.
- synopsis of transportation subject to Act, § 27.
- interstate transportation,
 - control of Congress over, § 28, ¶ A.

[References are to sections and paragraphs.]

TRANSPORTATION—*Continued.*

- extent of, subject to regulation, § 28, ¶ B.
- character of, determined by contract of shipment, § 28, ¶ C.
- consists of what, § 28, ¶ A.
- effect of temporary stoppage in State while in transit, § 28, ¶ D.
- transportation beginning and ending in same State, but passing through another State, § 28, ¶ E.
- transportation between places in United States and passing through foreign country, § 28, ¶ F.
- State railroads engaged in, § 33.
- jurisdiction of Commission over, § 28, ¶ B.
- examples of interstate transportation, § 27.
- intraterritorial transportation,
 - control of Congress over, § 29, ¶ A.
 - jurisdiction of Commission over, § 29, ¶ B.
 - application of Act to transportation between points within a territory, § 29, ¶ B.
- transportation within District of Columbia,
 - control of Congress over, § 30, ¶ A.
 - jurisdiction of Commission over, § 30, ¶ B.
- foreign transportation,
 - control of Congress over, § 31, ¶ A.
 - jurisdiction of Commission over, § 31, ¶ B.
 - general scope of, subject to Act, § 31, ¶ B.
 - transportation from United States to adjacent foreign country, § 31, ¶ C.
 - transportation from United States to foreign country and carried from such place to port of transshipment, § 31, ¶ D.
 - transportation from foreign country to place in United States and carried to such place from port of entry either in United States or adjacent foreign country, § 31, ¶ D.
 - when not subject to regulation by Commission, § 55.
 - messages sent from the United States to any foreign country, § 31, ¶ F.
- intrastate transportation,
 - excluded from Federal regulation and control, § 54, ¶ A.
 - Commission no jurisdiction over State traffic, § 54, ¶ A.
 - when a territory has been admitted into Union as a State, § 54, ¶ C.
- subject to jurisdiction of Commission,
 - interstate, § 28.
 - intraterritorial, § 29.
 - District of Columbia, § 30.
 - foreign, § 31.

[References are to sections and paragraphs.]

TRANSPORTATION—*Continued.*

- inland water, § 47.
- ocean, § 48.
- inland water transportation,
 - when subject to regulation of Commission, § 47.
 - extent of traffic subject to Act to Regulate Commerce, § 47.
 - when not subject to jurisdiction of Commission, § 57.
- ocean transportation,
 - when subject to regulation of Commission, § 48.
 - when not subject to jurisdiction of Commission, § 57.
 - extent of traffic subject to Act to Regulate Commerce, § 48.
- not subject to jurisdiction of Commission, § 54.
 - intrastate, § 54.
 - foreign, § 55.
 - inland water, § 57.
 - ocean, § 57.
 - by private carriers, § 58.
- private carriers,
 - not subject to jurisdiction of Commission, § 58.
- water transportation,
 - not subject to jurisdiction of Commission, § 57.
 - only subject to jurisdiction of Commission in respect to traffic transported under common control, management, or arrangement with rail carriers, §§ 47, 48.
- switching companies,
 - transportation handled by, independent of interstate movement,
 - not subject to control of Commission, § 61.
- performance of transportation service without rates on file with Commission, § 106.
- facilities for, duty of carriers to establish reasonable regulations affecting, § 165, ¶ A.

TRANSPORTATION-OF-EXPLOSIVES ACT,

See EXPLOSIVES.

TRESPASS,

Commission no jurisdiction over, § 405, ¶ I.

TROOPS,

See SOLDIERS.

TRUCKS,

transportation of trucks of cars destroyed on foreign lines, § 319.

TRUSTEES,

jurisdiction of Commission over trustees of common carriers, § 51.

[References are to sections and paragraphs.]

TYPEWRITING FORCE,

in employment of Commission, § 14, ¶ A.

U

UNDERCHARGES,

duty of delivering carrier to collect and of shipper to pay, § 303, ¶ A.

Commission without authority to compel shippers to pay, § 303, ¶ B.

Commission no authority to award set-off against shipper in favor of a carrier for undercharges, § 303, ¶ C.

relief of agent for uncollected undercharge, does not relieve carrier, § 402.

obligation of carrier to collect its tariff rate upon delivery of shipment, § 302.

UNIFORM ACCOUNTS,

See ACCOUNTS.

UNIFORM BILL OF LADING,

proceedings leading to adoption of, § 126.

forms of, § 126.

higher rates when shipments are tendered with other than, § 93, ¶ F.

UNIFORM CLASSIFICATION,

in general, § 79, ¶ A.

Commission will recognize efforts of carriers to arrive at, § 79, ¶ B.

UNIFORM DEMURRAGE RULES,

adoption of, by National Association of Railway Commissioners, § 298.

UNION STOCKYARDS,

legality of charge for switching live stock to and from lines of carriers and Union Stock Yards in Chicago, § 274, ¶ C.

UNITED STATES COMMISSION OF FISH AND FISHERIES,

free and reduced-rate transportation of fish and eggs for, § 311, ¶ B.

UNITED STATES GOVERNMENT,

not entitled to benefit of party rate in the transportation of soldiers, which has been established for pleasure and similar parties, § 563, ¶ C.

free and reduced-rate transportation of property for,

in general, § 311, ¶ A.

§ 485.

[References are to sections and paragraphs.]

UNITED STATES GOVERNMENT—Continued.

fish and eggs for United States Commission of Fish and Fisheries, § 311, ¶ B.

Indian supplies, § 311, ¶ C.

passes for caretakers of property, § 601, ¶ G.

Federal troops may enjoy special rates, § 608.

army officers not entitled to free passes, § 609.

navy officers not entitled to free passes, § 609.

persons in marine service may enjoy special rates, § 608.

fares governing transportation for, need not be published, § 644.

tariffs governing transportation for need not be published or filed,

UNJUST DISCRIMINATION,

See DISCRIMINATIONS, PREFERENCES AND CHARGES.

UNLOADING,

rules governing unloading of freight for shippers, § 260.

rules governing must be shown in published tariff, § 461, ¶ P.

USAGE OF COMMODITY,

rates fixed according to, unreasonable, § 93, ¶ V.

V

VACANCIES,

in Commission, how filled, § 3, ¶ G.

VALIDATION,

failure to validate passenger tickets, § 569.

of round-trip passenger tickets,

conditions relating to, must be shown in tariffs, § 568, ¶ A.

in case of illness or death, § 568, ¶ B.

failure to, § 568, ¶ C.

VALUATION,

rates based on declared valuation, § 301, ¶ I.

declaring false valuation as violation of statute, § 771.

VALUE OF COMMODITY,

as element in rate-making, § 89, ¶ D.

VALUE OF INVESTMENT,

of railroad, as element in rate-making, § 89, ¶ J.

railroad entitled to earn six percent on fair valuation, § 89, ¶ J.

VALUE OF SERVICE,

against cost of service principle in classification of freight, § 67, ¶ B.

as element in fixing classification,

in general, § 67, ¶ D.

commercial as distinguished from intrinsic value, § 67, ¶ D.

as element in rate-making, § 89, ¶ A.

[References are to sections and paragraphs.]

VEGETABLES,

- See "PERISHABLE FREIGHT."
- estimated weights on, § 152, ¶ C.
- passes to caretakers of, § 601, ¶ B.

VENTILATION,

- See VENTILATION CARS.
- duty of carrier to furnish facilities, § 203.
- liability of carrier for facilities furnished, § 205.
- sufficiency of service, § 205, ¶ B.
- jurisdiction of Commission over facilities and charges, § 212.

VENTILATOR CARS,

- See VENTILATION.
- duty of carriers to furnish, § 203, ¶ A.
- sufficiency of the car, § 205, ¶ A.

VOLUME OF TRAFFIC,

- as element in rate-making, § 89, ¶ F.
- as element in fixing classification, § 67, ¶ F.

W

WAGONS,

- not subject to Act to Regulate Commerce, § 58, ¶ A.
- transportation by, not subject to control of Commission, § 58, ¶ A.

WAR,

- preference in expedition of military traffic in time of, § 378.

WASHOUTS,

- extensions of time on limited tickets in case of, § 570, ¶ D.

WATER,

- transportation of, by pipe line, excepted from provisions of Interstate Commerce Act, § 45.

WATER CARRIERS,

- not subject to jurisdiction of Commission, § 57.
- only subject to jurisdiction of Commission in respect to traffic transported under common control, management, or arrangement with rail carriers, §§ 47, 48.
- pooling contracts between, not subject to Act, § 689, ¶ A.
- Commission no authority to establish in connection with,
 - route, § 181, ¶ B.
 - classification, § 82, ¶ E.
 - rate, § 109, ¶ J.

[References are to sections and paragraphs.]

WATER CARRIERS—Continued.

fare, § 586, ¶ H.

in Alaska, not subject to Act, § 68.

WATER COMPETITION,

See LONG-AND-SHORT-HAUL CLAUSE.

WATER TARIFFS,

See PASSENGER TARIFFS OR FARE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES.

WATER TRANSPORTATION,

inland,

when subject to regulation of Commission, § 47.

extent of traffic subject to Act to Regulate Commerce, § 47.

when not subject to jurisdiction of Commission, § 57.

ocean,

when subject to regulation of Commission, § 48.

extent of traffic subject to Act to Regulate Commerce, § 48.

when not subject to jurisdiction of Commission, § 57.

WEATHER,

demurrage charges waived account inclemency of, § 297, ¶ C.

WEIGHT OF ARTICLE,

as element in rate-making, § 89, ¶ G.

WEIGHTS AND WEIGHING,

right of initial carrier to furnish any available equipment in absence of a definite agreement with shipper under local any-quantity rate, § 142.

assessing freight charges on purported weights instead of actual weights of shipments, § 144.

actual scale weights conclusive, and not weights marked on bill of lading, § 146.

right of shipper to rely upon bill-of-lading weight when such weight is ascertained at point of origin, § 147.

billing shipments at net weights, § 148.

net weights, billing shipments at, § 148.

reweighing shipments,

in general, § 149, ¶ A.

correcting weights on carload shipments of coal, § 149, ¶ B.

carload minima applying in connection with refrigeration service, § 157.

overcharge account of excess weight, § 410.

[References are to sections and paragraphs.]

WEIGHTS AND WEIGHING—*Continued.*

- excess weight, overcharge account of, § 410.
- light loading of new cars on first trip, § 151.
- new cars on first trip, light loading of, § 151.
- not unlawful to charge an increased rate as penalty for loading beyond specified weight, § 150.
- weights at point of origin and destination considered, § 141.
- right of carriers to establish minima weights, § 132.
- duty of carriers to furnish cars capable of carrying minima weights prescribed, § 133.
- duty of carrier to establish minima weights consistent with loading capacity of cars, § 134.
- unreasonable for carriers to make minimum weight vary with size of car furnished, § 135.
- right of carriers to fix as minimum weight the marked capacity of car, § 136.
- unreasonableness of regulation fixing different minima weights for cars with and without refrigeration service, § 137.
- unreasonableness of rule fixing a higher minimum loading requirement than the practice of carriers will permit, § 138.
- less-than-carload shipments,
 - minima weights for, in general, § 140, ¶ A.
 - unreasonable to impose a minimum weight greater than actual weight of L. C. L. shipment when loaded in same car with other freight, § 140, ¶ B.
- weight to apply on carload shipment in absence of published carload minimum weight, § 139.
- estimated weights on standard packages,
 - in general, § 152, ¶ A.
 - cotton in bales, § 152, ¶ B.
 - vegetables, § 152, ¶ C.
 - apples, § 152, ¶ D.
- rules to govern where different capacity cars are furnished by the carrier than ordered by the shipper, § 153.
- carriers charging for weight not carried, § 143.
- allowances for weights of stakes, racks and blocks on flat or gondola car, § 330.
- weighing of grain not classed as elevation, § 237.
- penalty for false weighing,
 - by carrier, § 760.
 - by shipper, § 761.
- minima weights,
 - right of carriers to establish, § 132.

[References are to sections and paragraphs.]

WEIGHTS AND WEIGHING—Continued.

- duty of carriers to furnish cars capable of carrying prescribed minima weights, § 133.
- duty of carriers to establish minima weights consistent with loading capacity of cars, § 134.
- unreasonable for carriers to make minimum weight vary with size of car furnished, § 135.
- right of carrier to fix as minimum weight the marked capacity of the car, § 136.
- unreasonableness of regulation fixing different minima weights for cars with and without refrigeration service, § 137.
- unreasonableness of rule fixing a higher minimum loading requirement than the practice of carriers will permit, § 138.
- for less-than-carload shipments,
 - in general, § 140, ¶ A.
 - unreasonable to impose a minimum weight greater than actual weight of L. C. L. shipment when loaded in car with other freight, § 140, ¶ B.
 - in connection with refrigeration service, § 157.
- charging for weight of barrel without making corresponding charge when oil is shipped in tank cars not unjust discrimination, § 364, ¶ D.
- jurisdiction of Commission to award reparation for overcharge due to error in weighing, § 405, ¶ J.
- rules and regulations governing must be shown in published tariff, § 461, ¶ L.

WESTERN CLASSIFICATION,

- extent of territory, § 66, ¶ D.

WHARFAGE FACILITIES,

- discrimination in granting, § 669, ¶ C.

WHEAT,

- compared with flour, § 89, ¶ R.

WITHDRAWAL OF TARIFFS,

- See PASSENGER TARIFFS OR FARE SCHEDULES; FREIGHT TARIFFS OR RATE SCHEDULES; EXPRESS COMPANY FREIGHT TARIFFS OR RATE SCHEDULES.

WITNESSES,

- See ATTENDANCE AND TESTIMONY OF WITNESSES.

WORDS AND PHRASES,

- See TECHNICAL TERMS.

REGULATION—87.

[References are to sections and paragraphs.]

WRECKS,

- regulations where wreck involves car containing explosives, § 455.
- extensions of time on limited tickets in case of, § 570, ¶ D.
- free passes to persons injured in, § 594.
- free passes to nurses attending persons injured in, § 594.

WRECKING TRAINS,

- hours-of-service law not applicable to crews of, § 732.

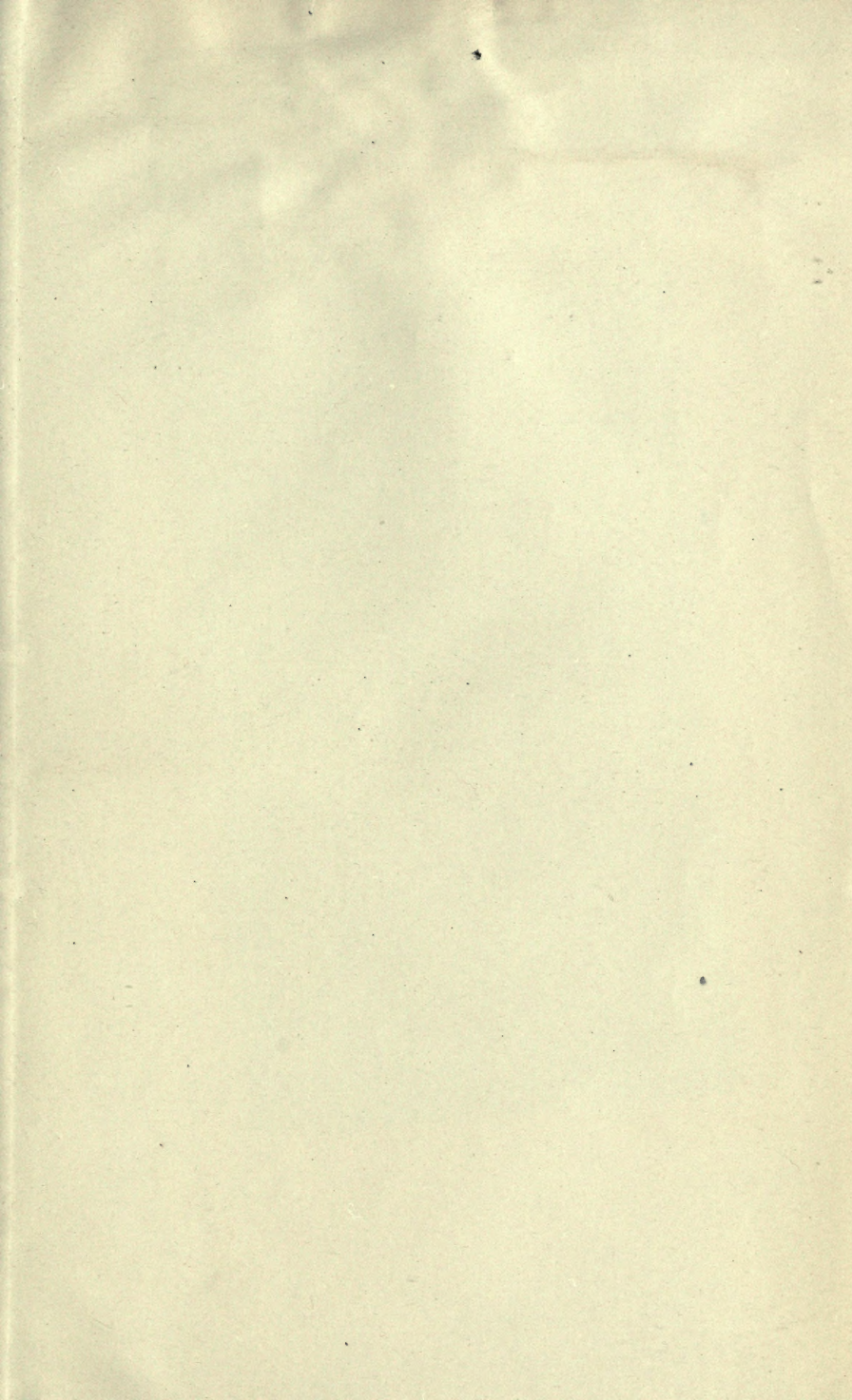
Y**YARDS,**

- handling of cars containing explosives in yards, § 455.

YOUNG MEN'S CHRISTIAN ASSOCIATIONS,

- free and reduced-rate transportation of secretaries, § 594.





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